Supreme Court, U. S.
FILED
JAN 17 1977
MICHAEL RODAK, JR., CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1976

No. 75-1605

RICHARD NIXON,

Appellant,

v.

ADMINISTRATOR OF GENERAL SERVICES, *et al.*,

Appellees,

THE REPORTERS COMMITTEE FOR FREEDOM OF THE PRESS, *et al.*,

JACK ANDERSON, LILLIAN HELLMAN, *et al.*,

Intervenor-Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

APPENDIX
[Volume I – Pages 1-356]

FILED MAY 3, 1976

PROBABLE JURISDICTION NOTED NOVEMBER 29, 1976

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The Opinion of the lower court is printed at 408 F. Supp. 321, and is found in Appendix A to Appellant's Jurisdictional Statement, pp. 1a-106a.

The Order of the lower court is found in Appendix B to Appellant's Jurisdictional Statement, pp. 107a-108a.

The Presidential Recordings and Materials Preservation Act, Pub. Law 93-526, 88 Stat. 1695, 44 U.S.C. §2107 note, 3315-24, is found in Appendix D to Appellant's Jurisdictional Statement, pp. 107a-123a.

CIVIL DOCKET
United States District Court for the
District of Columbia

Number 74-1852
Action For
INJUNCTION & DECLARATORY JUDGMENT

RICHARD NIXON, individually and
as former President of the
United States,
Plaintiff,
vs.
ADMINISTRATOR OF GENERAL
SERVICES,
and
THE UNITED STATES OF
AMERICA,
Defendants

PARTIES	ATTORNEYS
RICHARD NIXON, individually and as former President of the United States Plaintiff	Herbert J. Miller, Jr. 2555 M St., N.W. 20036 293-6400
JACK ANDERSON Intervenor-plaintiff	William A. Dobrovir 2005 L St., N.W. 20036 785-8919
vs.	
1. ADMINISTRATOR OF GENERAL SERVICES	Jeffrey Axelrad Dept. of Justice 20530 739-3300
2. THE UNITED STATES OF AMERICA Defendants	- do -

HENRY S. RUTH, JR., SPECIAL PROSECUTOR	Kenneth S. Geller Asst. Spec. Prosecutor 1425 K St., N.W. 20005
THE REPORTERS COMMITTEE FOR FREEDOM OF THE PRESS AMERICAN HISTORICAL ASSOCIATION AMERICAN POLITICAL SCIENCE ASSOCIATION JAMES MacGREGOR BURNS NAT HENTOFF DONALD G. HERZBERG WILLIAM LEUCHTENBURG ARTHUR LINK J. ANTHONY LUKAS AUSTIN RANNEY CLEMENT E. VOSE	Mark J. Spooner 1229 - 19th St., N.W. 20036 872-6700
LILLIAN HELLMAN BLAIR CLARK THOMAS BRANDON	Melvin L. Wulf 410 First St., S.E. 20003 544-1681
ADRIAN deWIND NORMAN DORSEN STEPHEN GILLERS JOHN HERSEY ROBERT SILVERS TELFORD TAYLOR HANNAH WEINSTEIN	Melvin L. Wulf 410 First St., S.E. 20003 544-1681

Intervenor-defendants

Dec. 20 Complaint, appearance, filed D.A. & A.G. ser 12-27-74

Dec. 20 Summons, Copies (3) and Copies (3) of Complaint issued #1 ser 1-6-75

Dec. 20 APPLICATION of pltf. for Temporary Restraining Order.

Dec. 20 APPLICATION of pltf. for convening of Three-Judge District Court.

*Dec. 23 SUPPLEMENTAL memorandum by pltf. in support of application for appointment of a three-judge panel; c/s 12/23/74.

*Dec. 20 MOTION of pltf. for TRO, heard in part and to be held in abeyance. (Rep: T. Dourian)

Richey, J.

Dec. 30 MOTION of Jack Anderson to intervene as party pltf.; P & A's; Exhibit; c/s 12/30/74. $5.00 paid & credited to U.S. by Dobrovir. Appearance of William A. Dobrovir, 2005 L St., N.W., 20036)

1975

Jan. 3 REQUEST by pltf. for immediate appointment of Three-Judge District Court; Memorandum; c/s 1/3/75.

Jan. 3 MOTION of pltf. for preliminary injunction; Memorandum; Appendix; c/s 1/3/75.

Jan. 9 MOTION of Henry S. Ruth, Jr., Special Prosecutor to intervene as party deft.; copy of affidavit of Leon Jaworski; Exhibit (Memorandum of Leon Jaworski; Exhibit; c/m 1/9/74. Appearance of Kenneth S. Geller, 1425 K St., N.W., 20005) No. fee- U.S. Govt.

Jan. 9 OPPOSITION by defts. to motion of Jack Anderson to intervene; c/m 1/9/75.

Jan. 9 ANSWER of defts. to complaint; c/m 1/9/75. Appearance of Jeffrey Axelrad, Dept. of Justice.

Jan. 9 CALENDARED CD/N

Jan. 9 MEMORANDUM of pltf. Nixon in opposition to motion by Jack Anderson to intervene; c/m 1/8/75.

Jan. 10 REQUEST by pltf for scheduling of evidentiary hearing on Preliminary Injunction motion; memorandum; c/m 1-10-75.

Jan. 10 MOTION of The Reporters Committee for Freedom of the Press, et al to intervene as defts; P&A; exhibits (2); c/m 1-10-75. (app. of Mark J. Spooner, 1229–19th St., N.W.) $5.00 paid by Spooner and credited to United States.

Jan. 14 OPPOSITION by pltf. to motion of intervenor-defts. for extension of time to respond to pltf's motion for preliminary injunction; c/m 1-14-75.

Jan. 16 REPLY by applicant-intervenor to oppositions to motion to intervene by Jack Anderson; c/m 1/14/75.

Jan. 17 JOINT motion for enlargement of time; P&A.

Jan. 17 RESPONSE of defts. to application for convening a three-judge court; c/m 1-17-75.

Jan. 17 OPPOSITION of defts. to motion to intervene filed by the Reporters Committee for Freedom of the Press, et.al.; c/m 1-17-75.

Jan. 17 OPPOSITION of pltf. to motion of the Reporters Committee for Freedom of the Press, et.al. to intervene; c/m 1-17-75.

Jan. 24 RESPONSE by applicant-intervenors, The Reporters Committee for Freedom of the Press, et al to oppositions filed by plaintiff Nixon and defts. to motion to intervene; c/m 1/23/75.

Jan. 31 HEARING on Motion for Three-Judge Court set 2-6-75 at 2 P.M.
(Rep: T. Dourian) Richey, J.

Feb. 5 APPLICATION from Judge Richey to Judge Bazelon requesting a Three-Judge Court; memorandum in re application. (N) Richey, J.

Feb. 6 DESIGNATION of the Honorable Carl McGowan, United States Circuit Judge, and the Honorable Edward Tamm, United States Circuit Judge, to serve with the Honorable Charles R. Richey, United States District Judge, as members of the Court to hear and determine this action.
(N) Bazelon, Chief Judge, U.S.C.A.

Feb. 12 MEMORANDUM by applicant-intervenors, The Reporters Committee for Freedom of the Press, etal in opposition to application of pltf. for convening a Three-Judge Court; attachment (1); c/s 2-12-75.

Feb. 13 MOTION of Lillian Hellman, et al to intervene as defts.; P & A's; Exhibit; c/m 2/7/75. $5.00 paid & credited to U.S. by Wulf. Appearance of Melvin L. Wulf, 410 First St., S.E., 20003)

Feb. 13 SUPPLEMENTAL memorandum by Jack Anderson, applicant-intervenor, in support of motion to intervenor; c/m 2/13/75.

Feb. 14 COPY of order U.S.C.A. staying effectiveness of opinion issued 1/31/75, and no further orders to be issued in this case until further order of U.S.C.A.; copy attached w/appendices A & B.

Feb. 19 MOTION of pltf. suggestion recusal of the Hon. Judge Charles R. Richey; P & A's; c/m 2/19/75.

Feb. 19 Opposition of Pltf. to motion to intervene by Hellman, et al.; P&A's; c/m 2/19/75

Feb. 20 ORDER setting hearing 3/17/75 at 9:30 A.M.; allowing movants for intervention to participate in hearing as amici curiae; directing and amici to submit briefs by 3/7/75 and supplementary replies by 3/13/75.

(N) McGowan, J., Tamm, J., Richey, J.

Feb. 20 ORDER denying motion of pltf. suggesting recusal.

(N) Richey, J.

Mar. 7 MEMORANDUM of Lillian Hellman, et al, amici curiae, re: jurisdiction of Three Judge Court and priority of consolidated cases and statutory case; c/m 3/5/75.

Mar. 7 RESPONSE by Government to issues posed by the Court; c/m 3/6/75.

Mar. 7 MEMORANDUM of the Reporters Committee for Freedom of the Press, et al with respect to the question of "priority"; c/s 3/7/75.

Mar. 7 MEMORANDUM of Jack Anderson as amicus curiae in response to the Court order of Feb. 20, 1975; c/m 3/7/75.

Mar. 7 MEMORANDUM of the Special Prosecutor, amicus curiae, re jurisdiction and priority; c/s 3/7/75.

Mar. 7 MEMORANDUM of pltf. Nixon re jurisdiction of the Three-Judge Court and the issue of priority; c/s 3/7/75.

Mar. 13 REPLY memorandum of Jack Anderson, amicus curiae; c/m 3/12/75.

Mar. 13 REPLY memorandum of The Reporters Committee for Freedom Of The Press, et al, amici curiae, concerning the convening of a Three-Judge Court and the issue of priority; c/s & c/m 3/13/75.

Mar. 13 REPLY memorandum by pltf. Nixon on the issues of jurisdiction and priority; c/s & c/m 3/13/75.

Mar. 17 HEARING begun to determine whether a Three-Judge Court has been properly convened,; concluded and taken under advisement.

(Rep: T. Dourian)

McGowan, J., Tamm, J., Richey, J.

Mar. 20 REPORT by defts. to the Court; attachment (report); c/m 3/20/75.

Mar. 21 MEMORANDUM by pltf. Nixon re two developments which affect issues pending before the Court; c/m 3/21/75.

Mar. 27 REPLY of The Reporters Committee For Freedom of the Press, et al to memorandum of pltf. re two developments which affect issues pending before the Court; c/s 3/27/75.

Mar. 28 NOTICE to C.J. Bazelon & C.J. Hart requesting the appointment of another Judge. (N)

Apr. 1 MEMORANDUM of Jack Anderson, amicus curiae, on two recent Supreme Court decisions; c/m 3/31/75.

Apr. 3 DESIGNATION of The Honorable Gerhard A. Gesell, United States District Judge to serve in place and stead of The Honorable Charles R. Richey as member of the Three-Judge Court. (signed April 1, 1975)

(N) Bazelon, C.J., U.S.C.A.

Apr. 8 REPLY by pltf. to memorandum of amicus curiae Anderson on two recent Supreme Court decisions; c/m 4/8/75.

Apr. 8 REASSIGNMENT of case from Judge Richey to Judge Gesell.
Pratt, J.

Apr. 10 SUGGESTION by pltf. re: reappointment of Judge Gesell as a member of panel; P & A's; c/m 4/10/75.

Apr. 11 ORDER from U.S. Court of Appeals vacating designation of the Honorable Gerhard A. Gesell, U.S. District Judge to serve inplace and stead of the Hon. Charles R. Richey; referring to Chief Judge George L. Hart, Jr. of the District Court for proper designation of a judge to replace Judge Richey.
Bazelon, Chief Judge, U.S.C.A.

Apr. 11 ORDER assigning case to Judge Aubrey E. Robinson for all purposes.
(N) Hart, C.J.

Apr. 14 CAPTION amended sua sponte by striking "to three-judge panel"
(fiat) (N) Hart, C.J.

Apr. 14 DESIGNATION of the Hon. Aubrey E. Robinson to serve in place of the Hon. Gerhard A. Gesell as a member of the three-judge Court.
Wright, J., Acting C.J., U.S.C.A.

May 1 ORDER granting motions for intervention of Special Prosecutor; Reporters Committee, et al, Lillian Hellman, et al and Jack Anderson; said intervention shall be limited; scheduling pre-hearing conference for 5/29/75 at 2:00 P.M.; parties, including intervenors shall submit certain memoranda within 15 days. (N)
McGowan, J., Tamm, J., Robinson, J.

May 1 COMPLAINT by intervenor, Jack Anderson.

May 1 ANSWER by intervenor-deft. Henry S. Ruth, Jr., Special Prosecutor to the complaint; counterclaim; Exhibit A attached.

May 1 ANSWER of intervenor-defts. The Reporters Committee For Freedom Of The Press, et al to the complaint.

May 1 MOTION of intervenor-defts., The Reporters Committee For Freedom Of The Press, et al for extension of time to respond to motion of plf. for preliminary injunction.

May 1 ANSWER OF INTERVENOR-defts., Lillian Hellman, et al to complaint.

May 6 TRANSCRIPT OF PROCEEDINGS, March 17, 1975, pages 1-90. Court's copy
Reporter: Tom Dourian

May 6 CHANGE of address for pltf. (unsigned) CD/N

May 16 PRE-HEARING Conference Memorandum by pltf.; c/m 5-16-75.

May 16 PREHEARING Memorandum by Federal defts.; c/m 5-16-75.

May 16 MEMORANDUM of intervenors, The Reporters Committee for Freedom of the Press, etal, Lillian Hellman, etal and Jack Anderson on pre-hearing matters pursuant to Order of May 1, 1975; c/m 5-16-75.

May 16 MEMORANDUM of the Special Prosecutor in response to the Court's Order; c/m 5-16-75.

May 19 REQUEST by intervenors re: substitution of attached page 5 for page 5 of Memorandum filed May 16, 1975.

May 29 PRE-HEARING Conference. (REP: G. Federation) ROBINSON, J.

Jun 13 ORDER granting Pltff. until 6-30-75 to submit certain documents; parties briefs to be filed by certain dates; setting matter for oral argument on 9-22-75. (N) Robinson, J.

June 30 EVIDENTIARY submission by pltf. Nixon: Request for admissions; Exhibits A, B w/Exhibits A & B; C w/Exhibit A; D; E; F; G; H; I; J; c/s 6/30/75.

July 2 NOTICE by intervenor-pltf., Jack Anderson, to take deposition of pltf. Richard Nixon; c/m 7/1/75.

July 9 MOTION of pltf., Nixon for a protective order; c/s 7-9-75.

July 14 OPPOSITION by intervenor-pltf., Jack Anderson to motion for a protective order; attachments A, B, & C; c/m 7-14-75.

July 15 POINTS and authorities by defts. in response to motion of pltf., Nixon for a protective order; c/s & c/m 7-15-75.

July 16 ORDER denying Pltfs motion for protective order provided deposition of Mr. Nixon be taken within 10 days at or near his home. (N) (McGowan J., Robinson J.)

Jul. 29 REQUEST by Jack Anderson, intervenor-pltff. for admissions; schedule; c/m 7-29-75.

July 31 STIPULATION by all counsel re: submission of affidavits.

July 31 EVIDENTIARY submission by defts., U.S. and Administrator of General Services: Affidavit of Harry J. Middleton w/Exhibits A thru E;

Affidavit of William R. Emerson w/Exhibits A thru U; Affidavit of William R. Emerson, Director of the Franklin D. Roosevelt Library; Affidavit of Jeanne W. Davis; Affidavit of John Stewart; Affidavit of Daniel J. Reed w/Exhibits A thru D; c/m 7-31-75.

July 31 STIPULATION by all counsel re: testimony given by John Nesbitt on Nov. 15, 1974, in C.A. 74-1813 shall be considered as testimony given in C.A. 74-1852.

July 31 STIPULATION by all counsel re: testimony given in re subpoenas duces tecum, Misc. No. 47-73 with regard to installation, maintenance and use of White House taping system will be considered testimony in C.A. 74-1852. (See stipulation for details)

July 31 STIPULATION by all counsel re: attachments designated Exhibits A thru EE are true copies of articles relating to the accession of papers of prior Presidents by the Library of Congress; Exhibits A thru Z; AA thru EE; c/m 7-31-75.

July 31 EVIDENTIARY submission by intervenor-defts.: Affidavits by Paul Henry Nitze; Morton H. Halperin w/exhibits; George F. Reedy; John P. Roche; James MacGregor Burns; Peter Lisagor; James M. Naughton; Robert Novak; Julian P. Boyd; Letter of Elbert B. Smith, dated 11/7/74; Copies, provided by counsel for pltf. Nixon on July 29, 1975; Selected portions of the record of "consolidated cases", C.A. 74-1518, 74-1533, 74-1551 and response to request for admissions; c/s 7-31-75. (See submission for details)

July 31 STIPULATION by all counsel that testimony of Phillip W. Buchen, Counsel to President Ford, given in deposition C.A. 74-1518 on Nov. 11 and 12, 1974, may be relied upon by the parties in C.A. 74-1852 as evidence; c/s 7-31-75.

July 31 SUPPLEMENTAL Evidentiary presentation by pltf. Nixon: Affidavits of Richard A. Jacobs w/exhibits A thru K; Thomas P. Wolf; William F. Matthews w/exhibits A thru D; Gertrude Fry; John C. Broderick w/exhibits A thru H; Jack Alvin Albright (copy); Mildred Stegall (copy); John R. Hubbard (copy); c/s 7-31-75.

Aug. 4 NOTICE of pltffs. to take deposition of Jeanne W. Davis; c/m 7-29.

Aug. 14 TRANSCRIPT OF PROCEEDINGS of 5-29-75, pages 1-58; courts copy Rep: E. Fedoration

Aug. 14 REQUEST by intervenor-defts' the Reporters Committee to pltf.; et al; c/s 8-14-75.

Aug. 18 DEPOSITION of Jeanne Davis for pltff; exhibits (5); published and filed.

Aug. 19 STIPULATION by all counsel in re: testimony by Directors Presidential Libraries; exhibits A thru G; c/s 8-19-75.

Aug. 19 BRIEF of pltff in support of claim for permanent injunctive and declaratory relief; table of contents; table of authorities; statement; c/s 8-19-75.

Aug. 20 DEPOSITION of Richard M. Nixon by defts and intervenor; Vol. I; Exhibits (2)

DEPOSITION of Richard M. Nixon by defts and intervenor; Vol. II; Exhibit (1)

DEPOSITION of Richard M. Nixon (consisting of exhibits) by defts and intervenor

MEMORANDUM of defts and intervenor deft Jack Anderson in re: Amendments to pltffs deposition; C/S 8-20-75.

Aug. 21 RESPONSE of pltff. to intervenor-defts request for admission; c/s 8-21-75.

Aug. 22 AFFIDAVIT of Richard N. Goodwin; c/m 8-22-75.

Aug. 26 SUBMISSION by defts' and intervenor deft Jack Anderson of affidavits (2) of Joseph F. Weitzen, the Court reporter who transcribed the deposition of Richard Nixon on July 25, 1975; c/m 8-25-75.

Aug. 29 RESPONSE by pltffs' to intervenor-defts' request for admissions; c/m/29-75

Sept. 8 MOTION by Special Prosecutor for leave to withdraw as counsel; c/m 9-8-75.

Sept. 8 BRIEF of defts. United States and Administrator of General Services; table of contents; table of authorities; statement; c/s 9-8-75.

Sept. 8 JOINT memorandum of intervenor-defts in opposition to pltffs request for injunctive and declaratory relief; table of contents; statement; appendix (1); c/s 9-8-75.

Sept. 11 REQUEST by Counsel for intervenor-defts re: filing table of authorities to joint memrandum filed 9-8-75; table of authorities

Sept. 15 REPLY brief of pltff; table of contents; appendix A; c/m 9-15-75.

*Sept. 18 ERRATA sheet by pltff for reply brief; c/m 9-18-75.

Sept. 19 DEPOSITION of Jeanne Davis for pltff.

**Sept. 17 ORDER granting motion of Special Prosecutor for leave to withdraw. (N). Robinson, J.
McGowan, J. USCA
Tamm, J. USCA

Sept. 19 STIPULATION that attached letter from Watergate Special Prosecutor may be consider as evidence in connection with issues before the Court, subject to any objection the parties would have if a representative of Watergate Special Prosecutor Force were testifying; attachment.

Sept. 22 CASE argued and taken under advisement.
Robinson, J.
McGowan, J.
Tamm, J.

Sept. 30 TRANSCRIPT OF PROCEDINGS, September 22, 1975; courts copy; Rep: E. Fedoration

Nov. 11 MOTION of pltff to supplement record; Exhibit A, B; c/m 11-11-75.

Nov. 13 PAGE 11 of Exhibit B to pltffs motion to supplement record filed 11-11-75.

Nov. 24 RESPONSE of intervenor-defts to pltff Nixon's motion to supplement record; c/s 11-24-75; P&A.

Nov. 26 REPLY of intervenor Jack Anderson to pltff Nixon's motion to supplement record; c/m 11-24-75.

Dec. 16 TRANSCRIPT OF PROCEEDINGS, 9-22-75; pages 1-106; courts copy; Rep: E. Fedoration

Dec. 17 ORDER granting pltffs motion of 11-11-75 to supplement record. (N). Robinson, J.

1976

Jan. 7 SUMMARY; Opinion and Order denying preliminary and permanent injunctive relief; dismissing complaint. (N). McGowan, J.
Tamm, J.
Robinson, J.

Mar. 5 NOTICE of appeal by pltff to the Supreme Court of the United States from Order of 1-7-76. ($5.00 paid and credited U.S.) Copies of notice of appeal to Irwin Goldbloom, William A. Dobrovir, Robert E. Herzstein and Leon Friedman.; c/m 3-4-76.

Mar. 12 MOTION of pltff to protect the status quo pending appeal; P&A's; c/s 12-76

Mar. 22 RESPONSE by Intervenor-defts. to motion of pltf. to protect the status quo pending appeal; c/m 3/22/76.

Mar. 22 POINTS and authorities by the defts. in opposition to pltfs. motion to protect the status quo pending appeal; c/m 3/22/76.

Mar. 23 MOTION of defts to amend this court's order of 1-7-76; affidavit of James B. Rhoads; Appendix A; P&A's; c/m 3-23-76.

Mar. 24 REPLY by pltfs. to the government and intervenor-defts. opposition to pltfs. motion to protect the status quo pending appeal; Exhibit A; c/m 3/24/76.

Mar. 25 ORDER denying pltffs motion to protect the status quo pending appeal. (N). McGowan J.
Tamm, J
Robinson, J.

Apr. 1 RESPONSE of pltff Nixon to the motion of Government to amend this courts order of 1-7-76; c/m 4-1-76.

Apr. 1 ORDER amending Opinion and Order of 1-7-76 by substituting certain portions. (N).
McGowan, J.
Tamm, J.
Robinson, J.

Apr. 15 ORDER permitting Administrator to move certain materials to Washington National Records Center, Suitland, Maryland. (N).
McGowan, J.
Tamm, J.
Robinson, J.

June 16 ORDER filed June 15, 1976 for release of hand-made American flag and return of same. (N)
Gasch, J.

June 15 MOTION by pltf. for leave to release an item in the presidential materials; memorandum: c/m 6/15/76.

Oct. 05 RECORD on appeal delivered to Supreme Court; Receipt acknowledged.

[Caption Omitted in Printing]

COMPLAINT
(INJUNCTION; DECLARATORY JUDGMENT)

Plaintiff, complaining of Defendants, alleges as follows:

I. Introductory Statement

1. This is a suit by Richard Nixon, former President of the United States, challenging the validity of an Act of Congress purporting to authorize the seizure, confiscation and disclosure of Mr. Nixon's Presidential materials in violation of his rights and privileges both as a citizen and former President. By this action, Plaintiff seeks a temporary restraining order and preliminary and permanent injunctions against enforcement, operation and execution of the Act, as well as a declaration of its invalidity. Plaintiff, by this action, also seeks implementation of a depository agreement or, alternatively, return of his Presidential materials.

II. Jurisdiction and Venue

2. This Court has jurisdiction to hear this action under Title 28 U.S.C. Sections 1331, 1332, 1346, 1356, 1361, and 2282. The amount of controversy, exclusive of interest and costs, exceeds the sum or value of $10,000. The Defendant Administrator is found in the District of Columbia and many of the acts hereinafter alleged to have been committed were committed in the District of Columbia.

III. Parties

3. Plaintiff, Richard Nixon, is a citizen of the United States and a resident of the State of California. He has

served as a member of the House of Representatives and the Senate of the United States, as Vice President, and as President of the United States from January 20, 1969, until his resignation on August 9, 1974.

4. The Administrator of General Services is named a Defendant herein.

5. The United States is named a Defendant herein.

IV. Nature of the Claim

The Presidential Materials In Question

6. During his term as President, Richard Nixon maintained at the White House, and other Presidential offices, many of his purely personal materials, including family and law practice records, memorabilia, correspondence and other items which cover periods of time both prior to and during his Presidency. Some of these personal materials are still located within the White House complex and, despite requests, have not at this time been sent to the former President.

7. During his term as President, Richard Nixon maintained within the White House and other Presidential offices materials related to his political activities both before and during his Presidency. Many of these political materials are still located within the White House complex and, despite requests, have not at this time been sent to the former President.

8. In addition to the personal and political materials referred to above, Richard Nixon and members of his staff, during the period Mr. Nixon served as President, generated and retained within the White House, the Old Executive Office Building ("OEOB"), parts of the New Executive Office Building ("NEOB") and other Presidential offices a substantial amount of materials which include, among other things, documents, papers, tapes, photographs, notes and other items, relating to Mr. Nixon's activities as President of the United States and to the conduct of government affairs.

9. All of the materials referred to in paragraphs 6, 7 and 8 herein, which were produced between January 20, 1969, and August 9, 1974, constitute the Presidential materials of Richard Nixon. As has been the case with every President of the United States, the Presidential materials generated and retained during the term of a President are the property of that President. Mr. Nixon is the owner of his Presidential materials.

10. During Plaintiff's term as President of the United States, he was aware of the fact that those who had previously held the Office of President treated their Presidential materials as their own. Plaintiff was also aware that Congress to that time had never opposed the actions of previous Presidents who had asserted total dominion over their Presidential materials but, to the contrary, had specifically provided a statutory procedure in Title 44 U.S.C. §2107 whereby a President—if he so desired—could deposit his Presidential materials with the General Services Administration under restrictions as to their use and access acceptable to the Administrator of GSA. With this knowledge and in reliance thereon, Plaintiff caused to be created and retained a substantial amount of materials which he would not have created or retained if he had concluded that such materials were not his personal property to be used as he deemed appropriate.

11. Many of Mr. Nixon's Presidential materials embody, constitute or reflect communications between himself and his aides relating to the conduct of the Office

of the President. The Constitution of the United States affords a privilege of confidentiality as to such materials both during and after the President's term in office subject to exception only upon demonstration of a specific need for relevant evidence in a criminal prosecution. The Supreme Court of the United States has held that the basis of this privilege is "the necessity for protection of the public interest in candid, objective, and even blunt or harsh opinions in presidential decision-making," as well as "the values to which we accord deference for the privacy of all citizens." Plaintiff claims the Presidential privilege as to such materials.

12. Many of Mr. Nixon's Presidential materials constitute, embody or reflect communications between Plaintiff and his wife, family, attorney, physician and others with whom he enjoys a legally or constitutionally protected privilege of confidentiality. Plaintiff claims the privilege as to such materials.

13. Because of the national interest in a swift but orderly transition from the Presidency of Richard Nixon to the Presidency of Gerald Ford, there was not adequate time when President Nixon resigned on August 9, 1974, to arrange for transfer of all the former President's Presidential materials and his personal records to his California residence or storage facility in the vicinity. Plaintiff directed and therefore acted on the assumption that his Presidential materials would be transferred forthwith to California so that he could personally review the materials or cause them to be reviewed under his direction, and thereafter processed, categorized and ultimately placed in a Presidential Library.

14. Because of demands made by the Special Prosecutor to staff members of the White House, directions were given that Plaintiff's Presidential materials

not be sent to his custody in California. To the date of the filing of this complaint, Mr. Nixon's Presidential materials remain in the custody of officials of the White House, the General Services Administration, and the Secret Service, and have not been shipped to him in California.

Executive Action

15. On or about September 3, 1974, Philip W. Buchen, Counsel to President Gerald Ford, and other representatives of President Ford entered into discussions with a representative of Plaintiff concerning his Presidential materials and the possible deposit of all or part thereof with the United States under conditions whereby the safety of the materials would be assured and whereby access could be gained upon lawful judicial order or other legal processes directed to Plaintiff.

16. On or about September 3, 1974, representatives of Plaintiff learned from Philip Buchen or his agents that William Saxbe, the Attorney General of the United States, had been requested to give an opinion concerning the legal ownership of Plaintiff's Presidential materials and that the Attorney General had concluded that title to the Presidential materials referred to herein vested in former President Nixon, as has been the case with the papers, documents and effects of every President of the United States.

Agreement to Deposit the Presidential Materials.

17. Because Plaintiff has been unable to obtain custody and control of his Presidential materials after his resignation, he was induced to enter an agreement dated September 6, 1974 (the "depository agreement") with the Defendant Administrator of General Services.

18. The depository agreement between Plaintiff and Defendant Administrator was executed pursuant to the authority of Title 44 U.S.C. § 2107. By that agreement, former President Nixon agreed to place on deposit with the General Services Administration all of his Presidential materials located within the metropolitan area of the District of Columbia, such deposit to be subject to the terms and conditions contained in the agreement.

Some of the Terms and Conditions of the Depository Agreement

19. The depository agreement, *inter alia*, provides that Defendant Administrator will transfer the Presidential materials to California and deposit them temporarily in an existing facility belonging to the United States located near Plaintiff's residence, where they will remain on deposit, under stated terms and conditions, until a permanent Presidential archival depository is established.

20. The depository agreement provides that access to Plaintiff's Presidential materials within both the temporary and permanent Presidential archival depository will require use of two keys, one to be given to Plaintiff, as custodian of the materials, and the other to be given to the Archivist of the United States or to members of his staff.

21. The depository agreement further provides that all of the Presidential materials (except tape recordings of conversations in the White House and Executive Office Buildings) will remain on deposit for a period of three years under terms and conditions specified in the depository agreement. Upon agreement of the parties, the personal materials may be removed without limitation as to time.

22. With respect to the tape recordings of conversations, the depository agreement provides that such recordings will remain on deposit until September 1, 1979. In no event will the tape recordings be destroyed prior to that date. Thereafter, the agreement provides that Plaintiff will and by the agreement did donate to the United States (such gift to be effective September 1, 1979) all of the tape recorded conversations. This gift was conditioned upon Plaintiff's right to order destruction of such of the tapes as he then might direct and upon the further condition that the tapes will be destroyed at the time of the former President's death subsequent to September 1, 1979 or on September 1, 1984, whichever should first occur.

23. In specific recognition of the fact that the Presidential materials should remain available for some period for production in connection with lawful judicial orders or other legal processes, the depository agreement provides that in the event production of the materials is demanded by subpoena or other order directed to an official or employee of the United States, the recipient thereof shall notify Plaintiff so that he, as owner and custodian of the materials, with sole right of access thereto, can respond to the demand and, if appropriate, assert any privilege or defense available. The parties recognized that the former President, as owner and physical custodian of the Presidential materials, will be subject to service of process demanding production of the materials and therefore any legally recognized need for the materials or part thereof can be accommodated.

Interference With the Depository Agreement.

24. On or about September 9, 1974, members of the Watergate Special Prosecution Force met with Philip

Buchen, and members of his staff, and agreed with them not to permit any of Plaintiff's Presidential materials to be transferred to California without the prior approval of the Special Prosecutor. Among other things, the effect of this decision was to interfere with the contractual and ownership rights of Plaintiff and to inhibit Plaintiff's ability to protect the constitutionally based privilege of confidentiality in his Presidential materials and to raise other defenses or privileges available under the Constitution or laws of the United States.

25. In an effort to bring about implementation of the depository agreement, for several weeks prior to October 17, 1974, representatives of Plaintiff participated in negotiations with members of the Watergate Special Prosecution Force concerning implementation of the depository agreement in whole or in part. These negotiations did not result in implementation of the depository agreement and members of the Watergate Special Prosecution Force stated at or about that time that they intended to serve a subpoena *duces tecum* on defendant Buchen demanding production of Mr. Nixon's Presidential materials.

The Demand for Compliance With
The Depository Agreement.

26. On September 13, 1974, the former President requested that steps be taken immediately to implement the depository agreement as to all of the Presidential materials not then subject to subpoena or other court order. As to those materials subject to outstanding subpoenas or court orders, he requested that arrangements be made for storage of such materials in the District of Columbia under conditions whereby access could be gained only by means of the two-key arrangement described in the depository agreement.

27. Subsequent demands for implementation of the depository agreement were made orally to Philip Buchen, to members of his staff, and to the Defendant Administrator, but the depository agreement was not implemented.

Judicial Action.

28. On October 17, 1974, Plaintiff filed a civil action against the Defendant Administrator, Philip W. Buchen, and H. Stuart Knight seeking to compel implementation of the depository agreement. *Nixon v. Sampson, et al.*, C.A. No. 74-1518 (D.D.C.). Within several days thereafter, twenty-one individuals and organizations in two separate actions filed suit against Plaintiff and others demanding access to Plaintiff's Presidential materials and seeking an injunction against implementation of the depository agreement and a declaration that Mr. Nixon did not own his Presidential materials. *The Reporters Committee for Freedom of the Press, et al. v. Sampson, et al.*, C.A. No. 74-1533, (D.D.C.); *Hellman, et al. v. Sampson, et al.*, C.A. No. 74-1551, (D.D.C.). Jack Anderson, a syndicated columnist, seeking similar relief, intervened in *Nixon v. Sampson, et al.*

29. At the present time, in addition to the actions referred to in paragraph 28 herein, there are pending approximately twenty-nine civil actions in which former President Nixon has been named as a defendant or in which demands have been made for production of his Presidential materials.

30. On at least one occasion during the pendency of C.A. No. 74-1518, Philip Buchen or his agents, pursuant to a civil subpoena demand in *Dellums, et al. v. Powell, et al.*, C.A. No. 71-2271 (D.D.C.), conducted a search of certain tape recordings of Plaintiff's conversations there-

by breaching the confidentiality of those communications. At the present time, Philip Buchen is in receipt of a civil subpoena in *Halperin, et al. v. Kissinger, et al.*, C.A. No. 73-1187 (D.D.C.), demanding production of Presidential materials including those subject to a Presidential privilege. Compliance with this subpoena demand will require a search by Philip Buchen's staff of Plaintiff's Presidential materials and will necessarily entail a breach of the confidentiality of those materials and a violation of Plaintiff's legally and constitutionally protected privileges and rights.

31. Subsequent to the filing of *Nixon v. Sampson, et al.*, the Special Prosecutor served a series of eight subpoenas *duces tecum* on Philip Buchen requiring a massive search of Plaintiff's Presidential materials to locate items possibly relevant to the subpoena demands. On November 9, 1974, the Defendant Administrator, Philip Buchen, and H. Stuart Knight entered into an agreement with the Watergate Special Prosecutor whereby the Special Prosecutor and his staff are permitted to conduct a general, warrantless search and seizure of any and all of Plaintiff's Presidential materials, regardless of their character, without any right by Plaintiff to object thereto or to raise any defenses against the production and use of the Presidential materials by the Special Prosecutor in any manner he may desire, even though at the time the parties executed the November 9 search and seizure agreement they were aware of and at least two of them had agreed to the depository agreement which precluded such warrantless searches but permitted production pursuant to lawful subpoenas according to procedures set forth in the depository agreement. Following execution of the search and seizure agreement, the Special Prosecutor withdrew the eight subpoenas previously served on Philip Buchen.

32. On November 11, 1974, Plaintiff requested the Court in *Nixon v. Sampson, et al.*, to enter a restraining order against implementation of the search and seizure agreement. Concurrently, the Special Prosecutor requested an order permitting implementation. To date no order permitting implementation of the search and seizure agreement has been entered.

Congressional Action

33. On September 18, 1974, ten days after the public announcement of the depository agreement, Senators Nelson, Ervin, Javits, Ribicoff, Metcalf, Huddleston, Chiles, Percy, Muskie, Hatfield, Dole, Montoya and Stevenson introduced a bill (S. 4016) in the United States Senate which was designed to abrogate the statutory-based depository agreement between the General Services Administration and Richard Nixon and to confiscate materials, documents, tapes, and other items generated during Mr. Nixon's term as President of the United States.

34. Among the sponsors of the bill, Senators Ervin and Montoya had served as Chairman and member, respectively, of the Senate Select Committee on Presidential Campaign Activities (the "Ervin Committee"). The Ervin Committee had earlier subpoenaed certain tape recordings of conversations between Plaintiff and others made while Mr. Nixon was President, but the United States Court of Appeals for the District of Columbia Circuit ruled that the Committee was not entitled to the recordings because they were presumptively privileged. *(Senate Select Committee on Presidential Campaign Activities v. Nixon,* ___U.S. App. D.C.___, 498 F.2d 725 (1974)).

35. S. 4016 was referred to the Senate Committee on Government Operations which, seven days later, reported it to the full Senate. The Government Operations Committee held no hearings on this controversial and historic measure. S. 4016 passed the Senate on October 4, 1974.

36. Upon referral to the House of Representatives, S. 4016 was sent to the Committee on House Administration on October 7, 1974. That Committee held no hearings on S. 4016, although the Subcommittee had conducted on September 30 and October 4 two hearing sessions on legislation establishing a commission to study the issue of private ownership of materials generated or retained by all constitutional officeholders other than Mr. Nixon, a provision which became Title II of S. 4016. The Committee reported S. 4016 to the full House on November 27, 1974, where it passed on December 3, 1974.

37. Various members of the House of Representatives, sitting as members of the House Judiciary Committee, had earlier attempted to gain access to portions of Plaintiff's Presidential materials by subpoenaing certain materials in connection with impeachment proceedings against then President Nixon.

38. Various members of the House of Representatives, at the time S. 4016 passed the House, were parties to civil litigation in which they seek access to or production of Plaintiff's Presidential materials.

39. Following conference committee action, S. 4016 passed both Houses of Congress on December 9, 1974 and was sent to President Ford for signature. President Ford signed the legislation into law on December 19, 1974.

Various Provisions of the Statute.

40. Title I of the Act is specifically directed at one individual, Richard Nixon. It requires the Defendant Administrator to take control of

> (1) all recordings made in the White House or Presidential offices in the Executive Office Buildings, Camp David, Key Biscayne and San Clemente, during the period Mr. Nixon was President and which involve Richard Nixon *or* other individuals who at the time of the conversation were federal employees; and
>
> (2) all historical materials of Richard Nixon, relating to the period of his Presidency, including "books, correspondence, documents, papers, pamphlets, works of art, models, pictures, photographs, plats, maps, films, motion pictures, sound recordings, and other objects or materials having historical or commemorative value." 44 U.S.C. §2101.

41. The Act precludes Plaintiff from access to his Presidential materials until such time as the Defendant Administrator promulgates regulations concerning the security of the materials.

42. The Act purports to permit any agency or department of the executive branch to have access immediately and at all times to the tape recordings and other Presidential materials with priority to be given to requests for access by the Special Prosecutor.

43. The Act purports to make the Presidential materials immediately available for use in any judicial proceeding, subject to rights, defenses or privileges which the Federal Government or any person may invoke.

44. The Act requires Defendant Administrator to submit regulations to each House of Congress for approval within 90 days after enactment of the legislation. Such

regulations are to provide for "public access" to Plaintiff's Presidential materials and are to "take into account":

> "(1) the need to provide the public with the full truth, at the earliest reasonable date, of the abuses of governmental power popularly identified under the generic term "Watergate";
>
> (2) the need to make such recordings and materials available for use in judicial proceedings;
>
> (3) the need to prevent general access, except in accordance with appropriate procedures established for use in judicial proceedings, to information relating to the Nation's security;
>
> (4) the need to protect every individual's right to a fair and impartial trial;
>
> (5) the need to protect any party's opportunity to assert any legally or constitutionally based right or privilege which would prevent or otherwise limit access to such recordings and materials;
>
> (6) the need to provide public access to those materials which have general historical significance, and which are not likely to be related to the need described in paragraph (1); and
>
> (7) the need to give to Richard M. Nixon, or his heirs, for his sole custody and use, tape recordings and other materials which are not likely to be related to the need described in paragraph (1) and are not otherwise of general historical significance."

45. The Act does not purport to distinguish between personal, political and official items, but directs seizure of all such materials generated during Mr. Nixon's Presidency.

46. The Act directs seizure of Presidential materials clearly subject to claims of Presidential privilege, as well as to other claims by Plaintiff or privileges or rights protected by law or the Constitution.

47. The Act purports to limit Plaintiff's ultimate access to the Presidential materials to purposes consistent with the provisions of the Act and the regulations promulgated thereunder.

48. The Act purports to prohibit transfer of the Presidential materials to California and requires they be maintained in the Washington, D.C. metropolitan area.

49. The Act, together with its legislative history, purports to direct any judicial challenges to the validity of the Act or any issues related thereto to a specific judge of the United States District Court for the District of Columbia.

50. The Act purports to authorize compensation to Plaintiff to the extent the Act deprives him of his property.

Reasons For Invalidity
Of the Act

51. The Act is unconstitutional, unlawful and void in that it violates Plaintiff's right of privacy under the First, Fourth, Fifth and Ninth Amendments to the Constitution of the United States by directing government seizure, inspection and disclosure of private materials and items containing, reflecting or recording the private thoughts, actions and conversations of Plaintiff for review, use, comment and other purposes by government officials, agencies, private litigants and the general public.

52. The Act is unconstitutional, unlawful and void in that it violates the Fourth Amendment to the Constitution of the United States by directing the wholesale seizure, impoundment and use of private materials in the nature of a writ of assistance or general warrant thereby constituting an unreasonable search and seizure.

53. The Act is unconstitutional, unlawful and void in that it deprives Plaintiff of rights and privileges otherwise available to him under the Fourth and Fifth Amendments to the Constitution of the United States.

54. The Act is unconstitutional, unlawful and void in that it violates the Presidential privilege of confidentiality recognized by the Supreme Court in *United States v. Nixon*, ___ U.S. ___, 94 S.Ct. 3090 (1974), by permitting access by government officials and innumerable other persons to materials subject to the Presidential privilege of confidentiality.

55. The Act is unconstitutional, unlawful and void in that it violates the separation of powers doctrine by directing the seizure from a former President of the United States of his private materials to which neither the public nor Congress are entitled to access.

56. The Act is unconstitutional, unlawful and void in that it purports to be an exercise of Congress' power of eminent domain but in fact condemns and seizes private property of Plaintiff without valid public purpose.

57. The Act is unconstitutional, unlawful and void in that it violates the Fifth Amendment to the Constitution by directing the seizure of Plaintiff's materials without due process of law and by purporting to affect Plaintiff's right to judicial review of the Act, both in a manner devoid of equal treatment to persons similarly situated.

58. The Act is unconstitutional, unlawful and void in that it violates the First Amendment to the Constitution of the United States by directing the seizure of materials which contain, reflect, or record political activities of Plaintiff and others, as well as private activities, for review, use, comment and other purposes by government officials, agencies, private litigants and the general public,

with a consequent chilling effect on Plaintiff's right to free expression and association.

59. The Act is unconstitutional, unlawful and void in that it purports to abrogate a valid contract entered into by Plaintiff pursuant to statutory authorization.

60. The Act is unconstitutional, unlawful and void in that it constitutes a Bill of Attainder or Bill of Pains and Penalties prohibited by Article I, Section 9, Clause 3 of the Constitution of the United States.

61. The Act is unconstitutional, unlawful and void in that it directs the seizure of materials embodying, constituting or reflecting privileged communications between Plaintiff and his wife, attorney, minister and physician.

Injury to Plaintiff

62. The examination, production or disclosure of the Presidential materials by or to persons other than the former President poses an immediate threat to the former President's constitutional rights and privileges. This threat constitutes a significant and irreparable injury which cannot be remedied by an action at law but can only be remedied by injunction.

63. The injury suffered by Plaintiff because of Defendant Administrator's actions in failing to implement the depository agreement impairs his constitutional, legal and contractual rights and privileges. This injury is imminent and irreparable and cannot be compensated by an award of damages. The only adequate remedy is mandamus or injunction in the nature of specific performance of the depository agreement by Defendant Administrator, uninhibited by any official or agent of the United States. Specific performance will not work a hardship upon Defendant.

64. Enforcement and implementation of the Act will irreparably injure Plaintiff's rights and privileges under law and the Constitution of the United States. This injury is imminent and irreparable and cannot adequately be compensated by money damages. Plaintiff's only adequate remedy is an injunction against enforcement and implementation of the Act and a declaration of its invalidity.

V. Relief Requested

WHEREFORE, Plaintiff requests this Court:

(a) to temporarily restrain Defendants from taking any action to enforce or implement the Act and to temporarily restrain Defendants from examining, producing or disclosing, or permitting others to examine, produce or disclose Plaintiff's materials covering the period beginning January 20, 1969 and ending August 9, 1974, which are within their custody and control;

(b) to preliminarily and permanently enjoin Defendants from taking any action whatsoever to enforce or implement the Act;

(c) to declare, adjudge and decree that the Act is unconstitutional, unlawful and void in its entirety;

(d) to the extent the Act is deemed to be valid and to lawfully deprive Plaintiff of his private property, to award just compensation for such deprivation;

(e) to permanently enjoin Defendants from taking any action inconsistent with the terms and conditions of the depository agreement;

(f) to order Defendant Administrator to perform those duties owed to Plaintiff with respect to implementation of the depository agreement pursuant to Title 44 U.S.C. §2107;

(g) Alternatively to (e) and (f), to direct Defendants to return to Plaintiff all Presidential materials referred to herein.

(h) to temporarily restrain and to preliminarily and permanently enjoin Defendants from taking any action to enforce or implement the search and seizure agreement of November 9, 1974; and

(i) to grant such other and further relief as this Court deems just and equitable in the circumstances.

Respectfully submitted,

/s/Herbert J. Miller, Jr.
Herbert J. Miller, Jr.

/s/Raymond G. Larroca
Raymond G. Larroca

/s/William H. Jeffress, Jr.
William H. Jeffress, Jr.

/s/R. Stan Mortenson
R. Stan Mortenson

MILLER, CASSIDY, LAROCCA & LEWIN
1320 19th Street, N.W., Suite 500
Washington, D.C. 20036
(202) 293-6400

Attorneys for Plaintiff, Richard Nixon

VERIFICATION

District of Columbia, ss:

R. STAN MORTENSON, being first duly sworn under oath, says that upon information and belief the foregoing

is a just and true statement of the facts upon which Plaintiff bases his claim for relief.

/s/R. Stan Mortenson
R. Stan Mortenson, Attorney for
Plaintiff, Richard Nixon

Subscribed and sworn to before me this 20th day of December, 1974.

/s/Carol G. Troiano
Notary Public

[SEAL]

My Commission Expires September 14, 1976

[Caption Omitted in Printing]

MOTION FOR PRELIMINARY INJUNCTION

Plaintiff, Richard M. Nixon, through his undersigned attorneys, hereby moves this Court for a preliminary injunction, *pendente lite,* (a) prohibiting defendants from taking any action to enforce, execute, or implement the Presidential Recordings and Materials Preservation Act (P.L. 93-526); (b) prohibiting Defendants from taking any action inconsistent with the terms and conditions of the depository agreement of September 7, 1974, between Richard Nixon and Arthur F. Sampson; (c) prohibiting Defendants from taking any action to enforce or implement the November 9, 1974 agreement among the Watergate Special Prosecutor, Philip W. Buchen, Arthur F. Sampson and H. Stuart Knight; and (d) in the

alternative to the relief requested in (b), directing Defendants to return to Plaintiff, forthwith, all presidential materials of the Nixon Administration now within their custody or control.

This motion is made upon the verified complaint in this action, the evidence to be presented at the hearing on this motion, and the various grounds set forth in the accompanying Memorandum.

Respectfully submitted,

/s/Herbert J. Miller
Herbert J. Miller, Jr.

/s/Raymond G. Larroca
Raymond G. Larroca

/s/William H. Jeffress, Jr.
William H. Jeffress, Jr.

/s/R. Stan Mortenson
R. Stan Mortenson

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(202) 293-6400

Attorneys for Plaintiff
Richard Nixon

September 6, 1974

Honorable Arthur F. Sampson
Administrator
General Services Administration
Washington, D. C.

Dear Mr. Sampson:

In keeping with the tradition established by other former Presidents, it is my desire to donate to the United States, at a future date, a substantial portion of my Presidential materials which are of historical value to our Country. In donating these Presidential materials to the United States, it will be my desire that they be made available, with appropriate restrictions, for research and study.

In the interim, so that my materials may be preserved, I offer to transfer to the Administrator of General Services (the "Administrator"), for deposit, pursuant to 44 U.S.C. Section 2101, *et seq.*, all of my Presidential historical materials as defined in 44 U.S.C. Section 2101 (hereinafter "Materials"), which are located within the metropolitan area of the District of Columbia, subject to the following:

1. The Administrator agrees to accept solely for the purpose of deposit the transfer of the Materials, and in so accepting the Materials agrees to abide by each of the terms and conditions contained herein.

2. In the event of my death prior to the expiration of the three-year time period established in paragraph 7A hereof, the terms and conditions contained herein shall be binding upon and inure to the benefit of the executor of my estate for the duration of said period.

3. I retain all legal and equitable title to the Materials, including all literary property rights.

4. The Materials shall, upon acceptance of this offer by the Administrator, be deposited temporarily in an existing facility belonging to the United States, located within the State of California near my present residence. The Materials shall remain deposited in the temporary California facility until such time as there may be established, with my approval, a permanent Presidential archival depository as provided for in 44 U.S.C. Section 2108.

5. The Administrator shall provide in such temporary depository and in any permanent Presidential archival depository reasonable office space for my personal use in accordance with 44 U.S.C. Section 2108(f). The Materials in their entirety shall be deposited within such office space in the manner described in paragraph 6 hereof.

6. Within both the temporary and any permanent Presidential archival depository, all of the Materials shall be placed within secure storage areas to which access can be gained only by use of two keys. One key, essential for access, shall be given to me alone as custodian of the Materials. The other key may be duplicated and entrusted by you to the Archivist of the United States or to members of his staff.

7. Access to the Materials within the secure areas, with the exception of recordings of conversations in the White House and the Executive Office Building which are governed by paragraphs 8 and 9 hereof, shall be as follows:

A. For a period of three years from the date of this instrument, I agree not to withdraw from deposit any originals of the Materials, except as provided in subparagraph B below and paragraph 10 herein. During said three-year period, I may make reproductions of any of the originals of the Materials and withdraw from deposit such reproductions for any use I may deem appropriate. Except as provided in subparagraph B below, access to the Materials shall be limited to myself, and to such persons as I may authorize from time to time in writing, the scope of such access to be set forth by me in each said written authorization. Any request for access to the Materials made to the Administrator, the Archivist of the United States or any member of their staffs shall be referred to me. After three years I shall have the right to withdraw from deposit without formality any or all of the Materials to which this paragraph applies and to retain such withdrawn Materials for any purpose or use I may deem appropriate, including but not limited to reproduction, examination, publication or display by myself or by anyone else I may approve.

B. In the event that production of the Materials or any portion thereof is demanded by a subpoena or other order directed to any official or employee of the United States, the recipient of the subpoena or order shall immediately notify me so that I may respond thereto, as the owner and custodian of the Materials, with sole right and power of access thereto and, if appropriate, assert any privilege or defense I may have. Prior to any such production, I shall inform the United States so it may inspect the subpoenaed materials and determine whether to object to its production on grounds of national security or any other privilege.

8. The tape recordings of conversations in the White House and Executive Office Building which will be deposited pursuant to this instrument shall remain on deposit until September 1, 1979. I intend to and do hereby donate to the United States, such gift to be effective September 1, 1979, all of the tape recordings of conversations in the White House and Executive Office Building conditioned however on my continuing right of access as specified in paragraph 9 hereof and on the further condition that such tapes shall be destroyed at the time of my death or on September 1, 1984, whichever event shall first occur. Subsequent to September 1, 1979 the Administrator shall destroy such tapes as I may direct. I impose this restriction as other Presidents have before me to guard against the possibility of the tapes being used to injure, embarrass, or harass any person and properly to safeguard the interests of the United States.

9. Access to recordings of conversations in the White House and Executive Office Building within the secure areas shall be restricted as follows:

   A. I agree not to withdraw from deposit any originals of the Materials, except as provided in subparagraph B and paragraph 10 below, and no reproductions shall be made unless there is mutual agreement. Access to the tapes

shall be limited to myself, and to such persons as I may authorize from time to time in writing, the scope of such access to be set forth by me in each said written authorization. No person may listen to such tapes without my written prior approval. I reserve to myself such literary use of the information on the tapes.

B. In the event that production of the Materials or any portion thereof is demanded by a subpoena or other order directed to any official or employee of the United States, the recipient of the subpoena or order shall immediately notify me so that I may respond thereto, as the owner and custodian of the Materials, with sole right and power of access thereto and, if appropriate, assert any privilege or defense I may have. Prior to any such production, I shall inform the United States so it may inspect the subpoenaed materials and determine whether to object to its production on grounds of national security or any other privilege.

10. The Administrator shall arrange and be responsible for the reasonable protection of the Materials from loss, destruction or access by unauthorized persons, and may upon receipt of an appropriate written authorization from the Counsel to the President provide for a temporary re-deposit of certain of the Materials to a location other than the existing facility described in paragraph 4 herein, provided however that no diminution of the Administrator's responsibility to protect and secure the Materials from loss, destruction,

unauthorized copying or access by unauthorized persons is affected by said temporary re-deposit.

11. From time to time as I deem appropriate, I intend to donate to the United States certain portions of the Materials deposited with the Administrator pursuant to this agreement, such donations to be accompanied by appropriate restrictions as authorized by 44 U.S.C. Section 2107. However, prior to such donation, it will be necessary to review the Materials to determine which of them should be subject to restriction, and the nature of the restrictions to be imposed. This review will require a meticulous, thorough, time-consuming analysis. If necessary to fulfill this task, I will request that you designate certain members of the Archivist's staff to assist in this review under my direction.

If you determine that the terms and conditions set forth above are acceptable for the purpose of governing the establishment and maintenance of a depository of the Materials pursuant to 44 U.S.C. Section 2101 and for accepting the irrevocable gift of recordings of conversations after the specified five-year period for purposes as contained in paragraph 8 herein, please indicate your acceptance by signing the enclosed copy of this letter and returning it to me. Upon your acceptance we both shall be bound by the terms of this agreement.

Sincerely,

/s/ Richard Nixon

Accepted by: Arthur F. Sampson
Administrator
General Services Administration

[Caption Omitted in Printing]

APPENDIX TO PLAINTIFF'S MEMORANDUM IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION

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3.	Letter from James E. O'Neill, Acting Archivist of the United States, to J. William Heckman, Chief Counsel, Senate Subcommittee on Constitutional Amendments, October 9, 1974.
4.	Letter from Herbert Hoover to Franklin Floete, Administrator of General Services, December 15, 1960.
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8.	Letter from Franklin Floete to Harry S. Truman, March 1, 1957.
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10.	Letter from Jacqueline B. Kennedy, Robert F. Kennedy, and Edward M. Kennedy to Bernard L. Boutin, Administrator of General Services, February 25, 1965.
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[SEAL] THE LIBRARY OF CONGRESS

Congressional Research Service
Washington, D.C. 20540

"OWNERSHIP OF PRESIDENTIAL PAPERS"

By
Vincent E. Treacy
Legislative Attorney
American Law Division
September 24, 1974

[SEAL] THE LIBRARY OF CONGRESS

Congressional Research Service

Washington, D.C. 20540

Traditional Treatment of Presidential Papers As Personal Property

Under a longstanding historical tradition, extending back to the time of George Washington, the papers and records of a President of the United States are regarded as his personal property, subject to his control and ownership. In our view, this traditional and customary treatment constitutes strong, if not conclusive, support for the proposition that Presidential papers are private rather than public property. Several factors which support this conclusion include (1) the weight which should be accorded to contemporaneous construction of the Constitution; (2) the ruling by Mr. Justice Story, while sitting in circuit, on the ownership of Washington's papers; (3) the acquiescence by Congress to the Presidents ownership of his papers, as evidenced by repeated appropriations of public funds to purchase papers from

heirs, and (4) the express congressional support for the principle of Presidential ownership contained in the legislative history of the Presidential Libraries Act of 1955.

Historical Background

The historical treatment of Presidential papers can be summarized briefly. To begin with, President Washington took his papers with him to Mount Vernon when he left the White House. At his death, Washington bequeathed the papers to his nephew, through whom an interest was acquired by Mr. Chief Justice Marshall and by Jared Sparks, author of a life of Washington. Congress also authorized the purchase of Washington's papers from their owners, appropriating $25,000 for that purpose. *Folsom v. Marsh,* 9 Fed. Cas. 342 (No. 4901) (C.C.D. Mass. 184), reprinted at 120 Cong. Rec. S16610 (daily ed. Sept. 16, 1974).

Congress eventually appropriated a total of $45,000 at various times to purchase the papers of George Washington. Congress also paid $20,000 for some of Jefferson's papers, $65,000 for Madison's, $20,000 for Monroe's, and $18,000 for Jackson's. Statement of Wayne C. Grover, Archivist of the United States, at Hearing before a Special Subcommittee of Committee on Government Operations, 84th Congress, 1st Session on Bills to Provide for Presidential Libraries 28 (1955) (hereinafter *"Hearing"*). In addition, $13,500 was expended for President Polk's papers, and $1,000 for those of President Tyler. *Hearing,* at 40-41. The main collections of the papers of most of the Presidents from Washington through Coolidge are located in the Library of Congress. There are a few exceptions: the papers of John Adams and John Q. Adams are held by the Massachusetts Historical Society, and those of Buchanan by the Historical Society of

Pennsylvania. The Hayes Memorial Library and the Harding Memorial Library are located in Tremont, Ohio, and Marion, Ohio, respectively. In most instances, the papers were presented to the Library of Congress or other depository as a gift from the heirs of the former President. *Resume of Presidential Papers,* printed in *Hearing* at 39-44.

Contemporaneous Construction

The principle of contemporaneous interpretation was enunciated by the Supreme Court in *Myers v. United States,* 272 U.S. 52, 175 (1926):

> This Court has repeatedly laid down the principle that a contemporaneous legislative exposition of the Constitution when the founders of our Government and framers of our Constitution were actively participating in public affairs acquiesced in for a long term of years fixes the construction to be given its provisions.

In *Powell v. McCormack,* 395 U.S. 486, 546-47 (1969), the Court cautioned that a prior unconstitutional act does not render a later act any less unconstitutional. Nevertheless, the Court indicated that earlier precedents are relevant for the insight they afford in ascertaining the intent of the drafters of the Constitution, and that their precedential value increases in proportion to their proximity to the Convention of 1787.

Folsom v. Marsh

This was a copyright case in which the rights to print both the private and the official papers of President George Washington were in direct issue. The case arose in the Circuit Court for the District of Massachusetts, and was decided by Mr. Justice Story of the United States Supreme Court, sitting as Circuit Justice. The litigation

involved two published works: *The Writings of George Washington,* compiled in 12 volumes by Jared Sparks and copyrighted by him, and *The Life of Washington in the Form of an Autobiography,* compiled by Bela Marsh and his associates.

The publisher of the Sparks compilation brought a bill in equity to enjoin the publication of Marsh's work, alleging that Marsh had pirated the letters of Washington in violation of their copyright protection. Marsh's work consisted of 866 pages, including 388 pages copied verbatim from Spark's compilation.

The defendants answered the allegation of piracy in part by arguing that the letters were public in their nature, not private property, and that they were meant by the author for public use. To this argument, Justice Story responded that it was most manifest that President Washington had deemed the papers to be his own private property, and had bequeathed them to his nephew, through whom Sparks had acquired his interest. Justice Story also noted that Congress had actually purchased the very letters and manuscripts at issue from their owners for the benefit of the nation. He therefore concluded that President Washington had not intended them exclusively for public use, as a donation to the public, and that he had esteemed them of value as his own personal property. Unless there is an unequivocal dedication of private letters and papers by the author to the public or to a private person, Mr. Justice Story held, then "the author has a property therein, and that the copyright thereof exclusively belongs to him."

The Presidential Libraries Act of 1955

The provisions for Presidential archival depositories are set forth in sections 2107 and 2108 of Title 44. Under

these provisions, the Administrator of General Services, when he considers it to be in the public interest, may accept for deposit the papers and other historical materials of a President or former President of the United States, subject to restrictions agreeable to the Administrator as to their use. 44 U.S.C. 2107(1). The Administrator is also authorized to accept land, buildings and equipment to be operated as a Presidential Archival depository, and as part of the national archive system. 44 U.S.C. 2108(1). In negotiating for the deposit of Presidential historical materials, the Administrator is required to "take steps to secure to the Government, as far as possible, the right to have continuous and permanent possession of the materials." 44 U.S.C. 2108(c). All such papers, documents, and other historical records are subject to any restrictions on their availability imposed by their depositors or donors. *Id.*

Sections 2107 and 2108 are ultimately derived from section 507 of the Federal Records Act of 1950, Sept. 5, 1950, ch. 849, 64 Stat. 587. The portions of that Act which affected Presidential papers were amended and reenacted in 1955 by the Act of August 12, 1955, ch. 859, 69 Stat. 695 (the Presidential Libraries Act).

Title 44 as a whole was enacted into positive law in 1968. Public Law 90-620, Oct. 22, 1968, 82 Stat. 1238. The legislative history of that Act stressed the fact that no substantive changes were intended by the changes in language made by the codification. See, e.g., Sen. Rep. No. 1621, 90th Cong., 2d Sess. (Oct. 9, 1968).

The 1950 Act authorized the Administrator to accept "the personal papers and other personal historical documentary materials" of the President. 64 Stat. 588. In 1955, this language was broadened to authorize the acceptance of "the papers and other historical materials"

of the President. 69 Stat. 695. This broadened language was preserved by the 1968 codification. 44 U.S.C. 2107 (1970).

In the hearings which led to the enactment of the Presidential Libraries Act in 1955, the Administrator of General Services testified that as a matter of ordinary practice, the President has removed his papers from the White House at the end of his term. This, he testified, was "in keeping with the tradition and the fact that the papers are the personal property of the retiring Presidents." Accordingly, he indicated that the proposed legislation was not mandatory in nature and would not bind future Presidents. Rather, the decision to make the gift would continue to rest with the former President and his heirs. Testimony of Edward F. Mansure, Administrator of General Service, in *Hearing* at 14-15.

There are several other statements in the record of the *Hearings,* expressing the view that a President's papers are his personal property. See, for example, statements by Rep. John W. McCormack, then Chairman of the Subcommittee (*Hearing* at 59), by Rep. Edward H. Rees (*Hearing* at 11), by Wayne C. Grover, Archivist of the United States (*Hearing* at 28), and by David D. Lloyd, Executive Director, Harry S. Truman Library, Inc. (*Hearing* at 52). There was nothing in the House or Senate Reports accompanying the legislation to contradict this assumption. See, S. Rep. No. 1189, 84th Cong., 1st Sess (1955) and H.R. Rep. No. 998, 84th Cong., 1st Sess. (1955).

From the foregoing review, it can be concluded that the traditional treatment of Presidential papers as personal property is supported by an unbroken tradition, a Federal court decision on the point, and positive acquiescence by Congress. Against this must be weighed

the arguments that the Presidents' papers are public property. There is also the related, but distinct, problem of the power of Congress to proclaim the status of such papers, either by statute limited to prospective application, or by a retroactive declaration that the papers of the President are now, and always have been, public property. In addition, it is necessary to examine two recent Federal cases, *Public Affairs Associates v. Rickover* and *Nichols v. United States,* for the light which they shed on the general question.

Presidential Papers as Public Property:

In 1969, Senator John J. Williams of Delaware, in the course of the debate on tax reform, argued that the papers of former Presidents should not be eligible for charitable deductions under the tax laws:

> One of the things that bothers me about getting special tax benefits through the gift of official papers is that the parties doing this are making a profit from the "charitable" giving of what are really official papers which, in my opinion, properly belong to the Government and not to them as individuals. I am sure that in many cases many of the papers are just plain junk, but to the extent that they do have value, they were developed by Government officials on Government time with the aid of Government staff personnel, were typed by Government secretaries on Government paper, and were even stored in Government files. 115 *Cong. Rec.* 20461 (July 23, 1969).

While the foregoing statement is cogent in its logic, it is more difficult to find direct legal precedent, expressly applicable to the Office of the President, in its support.

Public and Private Records

Difficult questions arise from any attempt to distinguish public records from personal or private records. The determination that a particular record is to be regarded as a public record will generally "depend on the purposes of the law which will be served by so classifying it." 417 *MacEwan v. Holm,* 359 P.2d 413; (Ore. 1961). In other words, a record may be a public record for one purpose but not for another. A writing may be a public record for the purpose of making it admissible in evidence without authentication, but not for the purpose of constituting constructive notice to a member of the public. It may be a public record sufficient to warrant judicial notice, but not to require retention under a statute permitting the destruction of certain records. *Id.*

Often, the courts do not key the definition of "public record" to the purpose for which the term is used in the particular instance. Frequently, definitions are borrowed from one field to be applied in others; for example, to decide whether records should be open to public inspection, definitions are sometimes borrowed from cases involving questions other than the right of inspection. The California courts have held that written records are "public writings" only if they are both 1) "official documents" and 2) "the written acts, or records of acts" of public officials. *Mushet v. Dept. of Public Service,* 170 P. 653,655 (Calif. 1917). The Oregon courts, on the other hand, have viewed this limited construction as inappropriate, and have given the terms a liberal construction consistent with the greatest public interest. Accordingly, in Oregon the term "records and files" embraces all writings in the custody of public office, and all such writings are subject to inspection unless there are circumstances justifying non-disclosure. *MacEwan v. Holm,* 359 P.2d 413, 422 (Ore. 1961).

In *Robinson v. Fishback,* a city treasurer had developed a new card index system to the city's assessment rolls for public improvements, and purchased the cards and cases for the system at his own expense. Upon leaving office, he attempted to take the cards with him, but was restrained by an injunction on the grounds that the cards were part of the public records of the office. The Court ruled that the cards were essential to the operation of the assessors office and must, in the public interest, be regarded as public records. *Robinson v. Fishback,* 93 N.E. 666 (Ind. 1911).

In *Polk County v. Parker,* a city assessor asserted ownership of about 601 maps and plats of city real estate which had been planned, executed and drafted by him, for his own use, while not engaged in official duties. He argued that the maps facilitated the work of his office, but were not a part of its records, and that he was entitled to possession of them. The court upheld his right to the ownership of the maps and plats, since he did not make them because of any statutory duty, he was not required to do so as a part of his official duties, and because he made them at times which did not interfere with his official duties.

A. *Polk County v. Parker,* 160 N.W. 320 (Iowa, 1916)

The Problem of Retroactivity

The question has arisen whether a bill making all papers of public officials government property would be constitutional if it applied retroactively to the papers of President Nixon.

While the answer to this question would depend on the language of such a bill, as a general rule the Congress has the power to enact retrospective laws which govern or

control past transactions. This power is subject to two limitations: 1) the *Ex Post Facto Clause* (Art. I, sec. 9, cl. 3) of the Constitution, which is applicable only to criminal statutes, and 2) the Just Compensation Clause of the Fifth Amendment, which is applicable when private property is taken for public use.

Accordingly, a bill controlling the disposition of the official papers of public officials could be made retroactive in effect, as long as it is not a criminal or penal statute, and does not have the effect of "taking" private property for public use. To comply with the *Ex Post Facto Clause,* the proposed bill should not include criminal penalties for violations of its provisions.

The Fifth Amendment problems, however, are more complex. There are two basic approaches: On the one hand, the bill could embody a legislative finding of fact that the official papers of public officials have been public property all along. It could then be argued that the bill would not deprive any person of private property, because the bill would simply declare the public property status of such official papers.

On the other hand, if either Congress or the Courts should determine that the official papers of past public officials were in fact their personal property, then a bill which purported to make those papers public property would be vulnerable to attack on Fifth Amendment grounds. The affected officials could argue that the bill would take their private property for public use, and that they should receive just compensation in cash for their loss. While Congress has the power to make rules governing the disposal of Federal property (Art. IV, sec. 3, cl. 2) and would appear to have an implied power to set the criteria for distinguishing public from private property, a legislative attempt to apply such criteria to

documents to [sic] past officials would be questionable, unless compensation is afforded. The bill introduced by Senator Nelson, S. 4016, reflects this approach by providing for just compensation if the papers are held to be private property. 120 Cong. Rec. §16871 (daily ed. Sept. 18, 1974).

The Rickover Case

The question of the literary rights of a public official in his speeches was litigated in *Public Affairs Associates v. Rickover,* a case which consumed more than eight years in the courts. The original trial court held that a Government official has a literary property right in writings or speeches which have some bearing on, or arise out of his official actions, as long as the writing or delivery of the work is no part of his official duties. Literary products in this category remain the property of the author to the extent that they are protected by the common law and by the law of copyright, and his rights are not affected by the fact that he is a Government officer or employee. *Public Affairs Associates v. Rickover,* 177 F. Supp. 601, 604 (D.D.C. 1959).

The trial court was reversed by the Court of Appeals on the grounds that the distribution of copies of the speeches placed them in the public domain before the copyright had been obtained, thereby forfeiting the copyright. 284 F.2d 262 (D.C. Cir. 1960). The Supreme Court, however, vacated this judgment because of inadequate record, and remanded for a new trial. 369 U.S. 111 (1962). On re-trial limited to two speeches, the fundamental question facing the court was "whether the two speeches fall within the purview of Admiral Rickover's official duties." 268 F. Supp. 444, 448 (D.D.C. 1967). In the court's view, those duties were a matter of contract between Admiral Rickover and the Navy Department.

Noting the broad authority vested in Rickover, the court ruled that, in this context, the duties of a high Government [official] should not be narrowly interpreted. Examining the circumstances of the preparation and delivery of the speeches and the speeches themselves, the court held that the writing and delivery of the speeches formed no part of the Admiral's official duties, and that the speeches were his private property and entitled to copyright. 268 F. Supp. 444, 448-49 (D.D.C. 1967)

The Nichols Case

Nichols v. United States, 460 F.2d 671 (10th Cir. 1972), aff'g 325 F. Supp. 130 (D. Colo. 1971), the plaintiff, a licensed physician and pathologist, sought access under the Freedom of Information Act (5 U.S.C. 551-52), to various materials relating to the assassination. Certain materials, including x-rays and autopsy photographs, had been deposited in the National Archives, subject to restrictions on access imposed under the authority of 44 U.S.C. §§2107 and 2108, pursuant to an agreement between the Administrator of General Services and representatives of the Kennedy estate. The plaintiff challenged the validity of these restrictions on the grounds that the items were the property of the United States not of the Kennedy estate. The Court of Appeals for the Tenth Circuit affirmed the District Courts holding that it was not necessary for the depositor of historical materials to be their "owner" under the statute authorizing deposit. The court also rejected the challenge on the grounds that plaintiff lacked standing to object to the agreement between the Kennedy estate and GSA, since he claimed no ownership in the materials on his own part.

Conclusion

The available legal precedents lead us to the conclusion that the papers and records of a former President must be regarded as his personal property. Opposed to this conclusion is the legal principle that papers produced by public officials in the course of their duties are regarded as public property. This principle has been applied frequently by state and Federal courts; on closer examination, however, it becomes difficult to apply with any certainty to Presidential papers. First, the Presidency is a Constitutional office, equal in status to the Congress and the Judiciary. It would appear that rules applicable to ordinary employees or to lesser public officials do not necessarily govern elected Constitutional offices. For example, the doctrine of executive privilege protects the confidentiality of Presidential conversations and enhances the separation of powers. See *United States v. Nixon,* No. 73-1766, July 24, 1974 (U.S.). No similar privilege attaches to the papers or records of other public officials.

Second, there is no assurance that the test applied in the *Rickover* case could be applied usefully to Presidential papers. It does not appear that a President's time can be divided into "official" time and "personal" time, nor that his papers can be categorized into "public" and "personal" records, in the absence of a statutory standard as authority for the distinction. Third, it does not appear that the tests applied by state courts to establish the status of public records can be usefully applied to Presidential papers, since those tests are so closely related to the specific circumstances of each case. Fourth, the basic holding of the *Nichols* case does not aid in the resolution of this problem, since that case merely confirms the power of GSA to accede to restrictions imposed by a donor of historical materials, regardless of the donor's ownership interest. The fundamental problem

remains—how can the question of ownership be resolved in the absence of statutory standards?

To conclude, there are many cases, involving situations *analogous* to that of Presidential papers, which lend support to the principle of public ownership. The *Folsom* case, however, is *directly* applicable to Presidential papers and has not been overruled or reversed. In our view, the *Folsom* case, coupled with Congressional acquiescence in the traditional treatment of the papers, is controlling.

We must, however, enter the following reservation: The legal status of the papers of a former President is, at the present time, very similar to the status of the doctrine of executive privilege before the Supreme Court decided *United States v. Nixon, supra.* Numerous precedents, both historical and legal, can be arrayed on both sides of the issue. No clear resolution is possible in the absence of a clear court test. While it is our conclusion that the *weight* of precedent and history favors the President's ownership of these papers, it is recognized that new court decisions could alter this result. Therefore, it is recommended that legislation governing Presidential papers be framed so as to afford an early opportunity for judicial resolution of the legal status of these papers.

/s/Vincent E. Treacy
Vincent E. Treacy
Legislative Attorney
September 24, 1974

[SEAL]

United States of America
GENERAL SERVICES ADMINISTRATION

National Archives and Records Service
Washington, DC 20408

October 9, 1974

Mr. J. William Heckman
Chief Counsel
Subcommittee on Constitutional Amendments
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Mr. Heckman:

Thank you for your letter of October 2, 1974, requesting information relating to George Washington's possession of those papers originated during his public career as Commander-in-Chief of the Continental Army and as President of the United States. Actually, there is no single recorded statement in which Washington asserted his claim to these papers. However, a series of actions directed by Washington concerning the care and disposition of his papers is well documented in the collection of Washington papers which are deposited at the Library of Congress. It is not surprising that Washington did not make a direct claim of ownership of the papers, since no one questioned his right to the papers.

The papers accumulated by Washington during his first year as Commander of the Continental Army were sent in August 1776 to Congress for safe-keeping prior to an expected British attack on New York City. These papers moved with Congress from Philadelphia to Baltimore and were later transferred to York, Pennsylvania, whence Washington reclaimed them in 1779.

In the meantime, the collection of papers at Washington's headquarters continued to grow, and a group of soldiers who made up the Commander-in-Chief's Guard were assigned the task of keeping them in order. This proved to be an unsatisfactory arrangement; consequently, on April 4, 1781, Washington wrote to the President of Congress requesting authority to hire several clerks to work at a location near his camp arranging and registering the manuscripts. Congress passed a resolution on April 10, 1781, giving Washington the authorization he had requested, and on May 25 Lt. Col. Richard Varick was hired as Washington's recording secretary to direct the work on Washington's papers. Varick established his workshop in Poughkeepsie, New York, at the home of Dr. Peter Tappan. Over the next few years Varick and the clerks worked at transcribing and registering the papers Washington periodically sent to them at Poughkeepsie.

On June 18, 1783, Washington ordered from Daniel Parker of New York "Six strong hair Trunks well clapsed and with good Locks." On November 9 the papers were packed in the trunks and loaded on wagons, and Bezaleel Howe, lieutenant of the New Hampshire line and a member of the Commander-in-Chief's Guard, was placed in charge of the escort that was to take them to Mount Vernon. "As you know," Washington wrote Howe, "[the wagons] contain all my Papers, which are of immense value to me."

In April 1789, when Washington left Mount Vernon for New York to assume his duties as first President of the United States, his papers for the previous years were left at the estate. At the end of his term as President, Washington employed Tobias Lear and Bartholomew Dandridge to separate from his papers those files which were intended for his successor in office, John Adams, and to pack and send the remainder to Mount Vernon.

Soon after he reached Mount Vernon, Washington wrote James McHenry that he planned to erect a building on the estate "for the accommodation & security of my Military Civil & private Papers which are voluminous, and may be interest[ing]."

Washington died at Mount Vernon on December 14, 1799. In his will he bequeathed to his nephew Bushrod Washington along with other personal property, "all the Papers in my possession, which relate to my Civel [sic] and Military Administration of the affairs of this Country . . . [and] also, such of my private Papers as are worth preserving."

The actions taken by Washington to assure the preservation and organization of these papers, to arrange for their shipment to Mount Vernon, and to arrange for their disposition after his death testify to his belief that the papers were his personal property to do with as he wished. No authority at that time considered challenging this belief.

I hope the previous discussion has provided the information you require. Please contact me if I can be of further assistance.

Sincerely,

/s/James E. O'Neill
JAMES E. O'NEILL
Acting Archivist
of the United States

HERBERT HOOVER

The Waldorf Astoria Towers
New York 22, New York
December 15, 1960

Honorable Franklin Floete, Administrator
General Services Administration
General Services Building
Washington 25, D. C.

Dear Mr. Floete:

Through the generosity of friends and the labors of the Herbert Hoover Birthplace Foundation, Inc., a library museum building is now being completed on the Foundation property of some 28 acres at West Branch, Iowa, on which are also situated the cottage in which I was born and various other structures. The holdings of the Foundation, designated collectively as the Herbert Hoover Library Museum, are to be offered as a gift to the United States to house my papers and other historical materials under Section 507 (f) of the Federal Property and Administrative Services Act of 1949, as amended, providing for Presidential archival depositories. I am indeed grateful for this action of the Foundation.

In furtherance of it I hereby offer to the United States, under Section 507 (e) of the Act and subject to the terms hereinafter set forth, all of my collected Presidential papers, wherever they may now be housed, as well as papers accumulated by me prior to my presidency and those accumulated since leaving the White House. These documents will probably number several million papers. My offer also includes other historical materials I have accumulated, such as books, photographs, motion pictures and memorabilia of various kinds. I will transfer

these papers and materials as soon as practicable after the transfer to the United States of the Foundation property, at such time or times as may be agreed upon between the Administrator of General Services, or his designee, and me or my representative. Excluded from this offer are the "war and peace" documents gathered since World War I, including records of such public organizations, which I have given to the War and Peace Library at Stanford University, Palo Alto, California, and which are now located there. There may be some other documents or materials which I or my representative shall determine to be excluded from this offer by reason of private or personal interest on my part or on the part of a member of my family.

My offer is conditioned upon acceptance by the United States of the offer of the land and buildings, known collectively as the Herbert Hoover Library Museum, which is being made by the Herbert Hoover Birthplace Foundation, Inc. My offer is further conditioned upon the agreement of the United States to maintain and operate the Library Museum at all times as a Presidential archival depository, as provided by the Act, for the storage of the papers and other historical materials I propose to give.

The papers and historical materials to be transferred to the United States pursuant to this offer are to be kept at the Library Museum, permanently, provided that the Administrator of General Services, subject to general terms and conditions for the handling and preservation of my papers, which conditions are set forth in a "Statement of Conditions" attached to this letter, and designated as "Annex A," shall have the right in his discretion (a) to make temporary loans to such persons, organizations, or institutions as he shall determine, (b) to dispose by sale, exchange, or otherwise of any such

papers or materials which the Archivist of the United States may determine to have no permanent or historical interest or to be surplus to the needs of such Library Museum, and (c) to remove from said Library Museum any or all such papers or materials if he deems it necessary to preserve them from threatened destruction.

I deem it necessary in the public interest, which is, of course, my interest, to prescribe the conditions contained in "Annex A." This is primarily to protect the many confidences of which the President and former presidents of the United States are the recipients. In addition, the period of time covered by my papers is so extended and the subject matters with which they deal so diverse that I consider it essential, particularly during the period of transfer and initial processing, to operate within these conditions. It is, however, my purpose to make available to the public, through your office, a substantial volume of my papers and historical materials at the earliest possible time and ultimately all of them as the passage of time and events may permit. Toward this end, I am establishing a Coordinating Committee, consisting of my sons and executors, to act with your office in my behalf as I shall direct during my lifetime, and to stand in my stead upon my death for such period of time as may be required. The committee will carry out my broad purpose to give the United States my papers and historical materials for access, while at the same time providing for the safeguarding of the information and its use. It is my expectation that the committee, under my direction, will establish procedures for its oneration and perpetuation to be of maximum effectiveness in furthering my purposes and of optimum assistance to your office.

I wish to express my appreciation to you and to members of your Administration for your counsel in connection with this offer of mine. I believe the offer to

be in accordance with those made to and accepted by you from others under the legislation providing for Presidential archival depositories. I am hopeful that in swift time we may see this Library Museum in operation as one more source of the materials of which the history of this glorious country is made.

With kindest regards,

Yours faithfully,

/s/Herbert Hoover
Herbert Hoover

HERBERT HOOVER

ANNEX A
Statement of Conditions

The following conditions shall govern the papers and other historical materials (as defined in the Act of August 12, 1955, 89 Stat. 695, and hereinafter called Materials) of Herbert Hoover to be transferred to the United States through the Administrator of General Services (hereinafter called Administrator) for deposit in the Presidential archival depository to be established at West Branch, Iowa, under the terms of a letter from former President Hoover to Administrator Floete, dated December 15, 1960, to which this Statement of Conditions is attached as a part.

1. *Persons having access:*

(a) Persons who shall have complete access to the Materials transferred shall be Herbert Hoover (hereinafter sometimes referred to as the Donor), persons designated

by him in writing during his lifetime, and, after his death, persons designated in writing by the Coordinating Committee (hereinafter called the Committee) established by him.

(b) Notwithstanding the foregoing, designated employees of the National Archives and Record Service shall be allowed all access required for the proper performance of normal archival work processes on such materials, not however, to include any publication or any disclosure of such material, under the general supervision of the Archivist of the United States.

2. *Coordinating Committee:*

(a) *Membership:* A Committee is hereby established to serve without compensation and to exercise, after the death of Herbert Hoover, (or during his lifetime as he may designate) all powers referred to in this Statement of Conditions or which Herbert Hoover might have exercised in his lifetime with respect to the Materials. The Committee shall consist of Herbert Hoover, Jr., Allan Hoover, and such others as Herbert Hoover, Jr., and Allan Hoover or the survivor of them may appoint to bring the total member of the Committee to not less than two nor more than five. If vacancies shall occur, Herbert Hoover, Jr., and Allan Hoover or the survivor of them, or after the death of both of them, the then acting member or members of the Committee, shall have power to fill such vacancies by instrument filed with the Committee's Secretary. The Committee shall select its Secretary, and any action taken by the Committee shall be sufficiently evidenced by a certificate in writing made by the Secretary, upon which certificate the Administrator may rely, conclusively.

(b) *Meetings:* Meetings may be held at such place and at such time as the members may from time to time determine, with a majority of the members then acting to constitute a quorum for the transaction of business. The Committee may act without a meeting by any instrument signed by a majority of the members then acting.

(c) *Delegation of Authority:* The Committee may delegate any of its powers to one or more of its members (save the power to appoint new members as set forth in paragraph 2(a) and the power to remove conditions as set forth in paragraph 7 hereof) and may from time to time authorize one or more members, or any agent, to execute and deliver any instrument on behalf of the Committee.

(d) *Amendment:* Herbert Hoover shall by written instrument have the power to alter or amend this paragraph 2, relating to the establishment and functioning of the Coordinating Committee.

3. *General Advice on Indexing, Cataloging, Exhibition and Staffing:*

The Administrator and the Archivist of the United States shall from time to time seek the advice of and confer generally with Herbert Hoover or with the Committee with respect to standards and procedures to be employed in the indexing, cataloging, and exhibition of the Materials, and with respect to the staffing of the Library Museum.

4. *Deposited and Transferred Materials:*

Materials transmitted to the Library Museum from time to time, by the Donor, or the Committee or others on behalf of the Donor, will be designated as Deposited Materials, title thereto to remain in the Donor, or after the Donor's death in the Committee, pending a determi-

nation, to be made during initial processing or as soon thereafter as possible, as to which, if any, of the Deposited Materials are to be excluded because of a personal or private interest of the Donor or a member of his family. Pending transfer of title, Deposited Materials so excluded may be withdrawn at any time by the Donor or Committee. Upon clearance in writing by the Donor or Committee in the event of Donor's prior death, title to Deposited Materials will vest in and transfer to the United States, and thereafter such Transferred Materials shall be administered by the United States in accordance with this Statement of Conditions.

5. *Sealed Materials:*

(a) The following Classes of Materials shall be segregated upon review and placed under seal:

(1) Those that are security-classified pursuant to law or Executive Order, until such classification shall be removed.

(2) Those the use of which may be prejudicial to the maintenance of good relations with foreign nations.

(3) Those containing statements made by or to Herbert Hoover in confidence.

(4) Those relating to the Hoover family or private business affairs, and those relating to the families or private business affairs of others having had correspondence with Herbert Hoover.

(5) Those containing statements about individuals which might be used to embarrass them or members of their families.

(6) Such other Material as Herbert Hoover, or the Committee, or the Administrator may specify.

(b) Materials which have not been reviewed and Materials placed under seal shall not be made available to anyone or their contents divulged to anyone, except persons authorized under the terms of paragraph 1, captioned "Persons having access."

(c) Materials placed under seal shall be reexamined from time to time by the Committee or as the Committee may direct and, subject to the approval of Herbert Hoover or the Committee, shall be opened to research use as soon as the passage of time or other circumstances have removed the conditions that required that they be placed under seal.

6. *Access for purpose of research:*

All competent private persons wishing to use for serious, scholarly research Materials which have been reviewed as provided in paragraph 5 above and which have not been placed under seal as a result of such review, shall be granted equal access thereto under rules and regulations to be prescribed by the Administrator or his designee.

7. *Removal of Conditions:*

Any and all conditions included herein as to any, part of, or all of the Materials shall be released as soon as the passage of time or other circumstances, as determined by both the Administrator and the Donor or the Committee, shall have eliminated the present justification therefor.

8. *Rules and Regulations of the Administrator:*

This Statement of Conditions is not intended to prevent the Administrator or his designee from establishing such rules and regulations deemed desirable by him

for the use of the Materials, which are not in derogation of any of the conditions set forth herein.

9. *Literary Property Rights:*

There are hereby assigned to the United States all of the literary property rights of Herbert Hoover in all his papers which may be transferred to the United States in accordance with the terms and conditions herein expressed, except that there is reserved to Herbert Hoover and his heirs (a) the right to make any use of such papers and (b) all literary property rights in any works that he or they have written or may hereafter write for publication. The foregoing reservation includes the right to license any publisher of such material.

Washington

January 17, 1953

My dear Mr. Larson:

As I am sure you are aware, it is my earnest desire that my personal papers be preserved and ultimately made available for historical research. You are also familiar with the project to raise funds by private subscription for the construction of a library at Grandview, Missouri, to serve as a depository for these and other papers and documentary materials deemed to be of potential interest to scholars. It is the intent of the sponsors of the project to present the library building and grounds to the United States if the Congress by appropriate legislation will accept the property and provide for its maintenance and operation. It would be my wish upon consummation of such an arrangement that title to my papers deposited in the library pass to the United States and the papers themselves become a part of the National Archives.

I therefore propose, as a preliminary step toward such a disposition, to offer my personal papers for deposit in the National Archives pursuant to the provisions of section 507(e) of the Federal Records Act of 1950.

Members of my staff have been discussing with representatives of your Administration certain problems in connection with the custody, storage, and review of the papers pending the completion of the library project and the making of a definitive offer to deposit. I am advised that the plans outlined herein are in accord with the conclusions reached at these conferences.

My personal papers consist mainly, of course, of those accumulated by me during my tenure as President of the United States, but there are some which I acquired while Vice President and Senator, and others which relate to earlier periods in my life.

I propose to retain all of these in my personal possession when I leave office, and to move them to a secure place of storage under guard in Kansas City, Missouri. There I intend to review them and prepare them for ultimate deposit under section 507(e) of the Records Act. I am requesting you to designate two or three experienced archivists to work with me on this project. I should expect to be consulted regarding the particular individuals to be assigned to the work.

It is my understanding that you have the authority to detail personnel to review or assist in the review of the papers, preliminary to and in connection with a proposed offer for deposit under the provisions of section 507(e) of the Records Act, and that this power is derived from the provision of section 507(a)(3) of the same Act authorizing you "to direct and effect the transfer of materials from private sources authorized to be received by the Administrator by the provisions of subsection (e) of this section."

As has been indicated, this letter is not to be construed as a definitive offer for deposit within the meaning of section 507(e) of the Records Act, but only as a prreliminary offer or proposal to deposit. It is my firm intention, however, to offer the great bulk of my personal papers for deposit under the cited section or under whatever similar provision is included in the acceptance legislation in the event that the proposed library at Grandview is constructed and is accepted by the Congress. Alternatively, if the project for construction of the library should be abandoned or fail of accomplishment within a reasonable time, I intend to make an offer for deposit under section 507(e), and to make appropriate provision therefor in my will.

It is not my purpose to pass title to any of my personal papers at this time by virtue of the proposals outlined herein nor to make any binding commitment as to just what papers will be offered for deposit. There will be some few papers which for sentimental reasons I may wish to give to relatives or friends. There will undoubtedly be in the files many papers having no historical value either because they are duplicated elsewhere in official records or because they were of purely transitory interest. Such items can be eliminated in the course of the reviews contemplated, so that the material deposited will not be unnecessarily voluminous.

During the interval prior to deposit of the papers, I expect to be working on them and using them to refresh my recollection, consequently I wish to keep them available for my use in connection with my studies and any writing I may do.

Furthermore, I contemplate that when my offer for deposit is made I shall impose restrictions upon the use of certain of the papers for varying periods as may be

authorized by law. Such restrictions have customarily been imposed by my predecessors or their heirs in making deposits of Presidential papers.

I hope that satisfactory arrangements for the preservation and eventual deposit of my papers in the National Archives can be worked out along the lines indicated above.

Sincerely yours,

/s/Harry S. Truman

Honorable Jess Larson,
Administrator
General Services Administration
Washington, D.C.

GENERAL SERVICES ADMINISTRATION

January 19, 1953

The President
The White House
Washington 25, D. C.

Dear Mr. President:

I have your letter of January 17, 1953, concerning the disposition and care of your personal papers. I have long been aware that you consider the possession of these papers a public trust and that you wish ultimately to make them available to scholars in a library to be constructed at private expense at Grandview, Missouri. In your letter, you tell me of your hope that the papers and the library housing them will be accepted as a gift to the

Government of the United States and maintained as a part of the National Archives, and that it is your intention to offer to make such a gift of most, if not all, of your papers for that purpose, to the end that eventually they will thus be deposited in the National Archives with the title passing to the United States.

Meanwhile, pending the construction of the library, the question arises as to the temporary disposition, safekeeping, and care of these very valuable sources of historical information. You desire, as all of your predecessors have done, to have your personal papers in a place of safekeeping near your place of residence so that you may have access to them. You have therefore arranged to have the papers transferred to a secure storage place under guard in Kansas City, where they will be under your control.

You advise that, in connection with the temporary storing of the personal papers you would like to have the services and the advice of at least two experienced, professional archivists, in order to assist in and help to supervise the work of classifying, arranging, and selecting the papers for their eventual transfer to the United States.

By virtue of your proposal to offer your papers for deposit pursuant to section 507(e) of the Federal Records Act, subject to the qualifications stated in your letter, the General Services Administration can, as you request, under the provisions of section 507(a)(3) of that Act, assign two achivists to assist you, to the extent you may desire, in the task of arranging, classifying, indexing, and packing the papers in preparation for ultimate deposit. It is, of course, essential that you be consulted regarding the particular individuals to be designated to assist you in this task. There is no reason why their work

should interfere with your use of these papers for the purposes indicated in your letter. Indeed, it should facilitate your use of them.

Not only historians and archivists, but all the people, are indebted to you for your interest in seeing your papers properly preserved and made available in due time for scholarly research, so that the complete story of today's events may serve as a guide to future generations.

Sincerely yours,

/s/Jess Larson
Administrator

HARRY S. TRUMAN
Federal Reserve Bank Building
Kansas City 6, Missouri

February 12, 1957

Honorable Franklin G. Floete
Administrator of General Service
General Services Administration
Washington 25, D. C.

Dear Mr. Floete:

As you know, it has long been my desire to give to the United States the papers accumulated during my years in public office and the other historical materials, mementos, objects of art and other memorabilia acquired by me as President during my term of office, to the end that the people may have those things available for study and research, and for their enjoyment and education. In pursuit of this objective, a Library building has been

constructed in the City of Independence, by public subscription, suitable for housing, preserving and exhibiting these papers and materials. This building is now nearing completion, and it is the intention of the Harry S. Truman Library, Inc., the non-profit corporation which has financed and erected it, to present it as a gift to the United States on certain conditions, and provided the United States will maintain, operate and protect it as a Presidential archival depository as provided in the Federal Property and Administrative Services Act of 1949 as amended (65 Stat. 695).

At this time, therefore, under the terms of the said statute, I offer my papers and other historical materials as hereinafter described to the United States on condition that they will be preserved and made available pursuant to restrictions imposed by me, and on condition that they be accepted by the United States on the terms and provisions hereinafter set forth.

1. I offer to the United States all my right, title and interest in my papers now stored in the Memorial Building on Maple Avenue and Pleasant Street in the City of Independence, Missouri. These include substantially all the papers which were in the files of the White House when I relinquished the office of President. They also include a number of other files accumulated by me in my public offices prior to that time, and are estimated to total several million documents.

2. I offer to the United States all my right, title and interest in my other papers relating to my public offices wherever located or stored, with the exception of certain papers determined by me, or in the event of my death by my executors or personal representatives, prior to the transfer thereof, to be related in whole or in part to the business or personal affairs of myself or my family

(which term as used in this offer shall include my wife, mother, daughter, brother, sister, nephews or nieces).

3. I offer to the United States all the other historical materials collected during my tenure of public office now belonging to me which are located in Jackson County, Missouri, or elsewhere, other than in my private residence in the City of Independence, Missouri, and which shall not prior to the transfer thereof be marked, labelled or otherwise designated to show a reservation of title in me, or which shall not have been received for the business or personal use of myself or my family. The term "historical materials" as used in this offer shall bear the same meaning as defined in the Federal Property and Administrative Services Act of 1949 as amended (69 Stat. 695).

4. The offers contained in paragraphs 1, 2 and 3 hereof shall lapse and become ineffective unless within one year from the date hereof the United States shall accept the offer of the Harry S. Truman Library and the land surrounding said building now under construction in the City of Independence, Missouri, and shall agree to maintain and operate it at all times thereafter as a Presidential archival depository for the storage of the papers and the other historical materials included in such offers in accordance with the provisions of the Federal Property and Administrative Services Act of 1949 as amended.

5. Upon the acceptance and agreement mentioned in the preceding paragraph, the papers described in paragraph 1 will be transferred to the United States for storage in said building as soon as possible; and the papers and historical materials described in paragraphs 2 and 3 hereof shall be transferred from time to time as shall be agreed upon by the Administrator of the General Services Administration and me or my executors or representatives.

6. I or my executors or personal representatives shall be the sole judge of (a) which papers relate to my various public offices and which relate to the personal or business affairs of myself or my family, and (b) which of my other historical materials were received for the business or personal use of myself or my family.

7. All papers and other historical materials which shall be transferred pursuant to the foregoing to the United States shall be kept permanently in the said Harry S. Truman Library, after the United States shall have accepted and agreed to maintain it as set forth in paragraph 3, subject to the right of the Archivist of the United States in his discretion (a) to make temporary loans thereof to such persons, organizations or institutions as he shall determine, (b) to dispose by sale, exchange or otherwise of any such papers or historical materials which he may determine to have no permanent value or historical interest or to be surplus to the needs of the Harry S. Truman Library, and (c) to remove from the said Library any and all of such papers or historical materials if he shall deem it necessary to preserve them from threatened destruction.

8. All papers transferred by me or my representatives to the United States shall be freely accessible at all reasonable times to me or to persons designated by me in writing during my life or after my death to the persons designated by me in my will.

9. It is my purpose to make the papers and other historical materials referred to herein available for the purpose of study and research as soon as possible and to the fullest possible extent. However, since the President of the United States is the recipient of many confidences from others, and since the inviolability of such confidence is essential to the functioning of the constitutional

office of the Presidency, it will be necessary to withhold from public scrutiny certain papers and classes of papers for varying periods of time.

Therefore, for the time being, the following classes of papers shall be withheld from inspection by, and their contents shall be kept confidential and shall not be divulged to, anyone (including public officials) other than (1) regular employees of the National Archives and Record Service performing normal archival services on such papers under the general supervision of the Archivist of the United States, and (2) myself and persons authorized by me in my will or otherwise to have access to such papers on my behalf, pursuant to paragraph 8 hereof:

(a) Papers that are classified as to secrecy and security pursuant to law until such classification shall be removed. Such classification shall be reviewed from time to time; and

(b) Papers containing statements which may in any manner injure, embarrass or harass any living person or the living members of the family of any deceased person, or papers which may in any manner be prejudicial to the conduct of foreign relations with any government, or papers containing statements made by or to me in confidence in any official capacity.

10. Subject to my approval or the approval of the persons designated by me in my will or otherwise to act after my death with respect to these papers and historical materials, the employees of the National Archives and Record Service may perform the services necessary to the classification of the papers in accordance with the foregoing paragraph, and may place any withheld papers

in special files where they shall be available only to me or to such persons or employees.

11. All papers withheld in accordance with the foregoing provisions shall be reexamined from time to time by employees of the National Archives and Records Service under the direction of the Archivist of the United States and, subject to approval by me or by persons designated by me in my will or otherwise to act after my death with respect to those papers and historical material shall be opened to general use as soon as the passage of time or other circumstances have removed the conditions that justify their being temporarily withheld.

12. All competent private persons interested in using the papers for purposes of serious scholarly research shall be granted equal access to the papers that are not withheld in accordance with the foregoing.

13. I hereby assign to the United States all my literary property rights in all papers which may be transferred to the United States in accordance with the terms and conditions herein expressed, except that I reserve to myself and my heirs (a) the right to make any use of such papers and (b) all literary property rights in any works that I have written or may hereafter write for publication. The foregoing reservation includes the right to license any publisher of such material.

Sincerely yours,

/s/Harry S. Truman
Harry S. Truman

GENERAL SERVICES ADMINISTRATION

March 1, 1957

Honorable Harry S. Truman
Federal Reserve Bank Building
Kansas City, Missouri

Dear President Truman:

In accordance with the powers vested in me by the Federal Property and Administrative Services Act of 1949, as amended, it is my pleasure to inform you that your offer of certain documents and other historical materials contained in your letter of February 12, 1957, is acceptable under the conditions which you have prescribed.

Accordingly, on behalf of the United States I accept the offer subject to those conditions. This acceptance, like your offer, is of course, conditioned upon the acceptance by the United States of the offer of the land, building and equipment. I enclose a copy of my reply to Mr. O'Connor's letter on behalf of the Harry S. Truman Library, Inc.

I am convinced that your making these materials available for research within the splendid facilities of the Truman Library offers both the public and scholars a remarkable opportunity to achieve an insight into the history of our times. Let me also say that it has been a pleasure to work with you and your staff in making the necessary preparations for this significant acquisition into the national archives system.

Sincerely yours,

/s/Franklin G. Floete
Administrator

THE WHITE HOUSE
Washington

April 13, 1960

Dear Mr. Floete:

The papers of a President, which from the time of George Washington have been regarded as the personal property of the President, have, inescapably, a direct and important association with the history of our country. Believing that they should be permanently and generally available for study, I desire that my papers should be made so available and believe that this can best be done through a Presidential archival depository, as provided by the Federal Property and Administrative Services Act of 1949, as amended.

The Eisenhower Presidential Library Commission, an agency of the State of Kansas, now has under construction in the City of Abilene a library building, financed by public subscription, where it is proposed to house my Presidential and other papers. This building is appropriately situated on land adjacent to my boyhood home and to a museum, both of which are maintained by the Eisenhower Foundation, a non-profit corporation organized under the laws of Kansas.

When the Library building has been completed, the Commission intends to present it, together with equipment and grounds, as a gift to the United States, on condition that the United States will maintain and operate this Library as a Presidential archival depository under the provisions of the above cited Act.

Therefore, in furtherance of this plan and in accordance with the provisions of that Act, I now offer as a gift to the United States such of my papers and other

documentary materials as are hereinafter described, on condition that these papers and materials will be accepted, preserved, and made available by the United States under the following terms:

1. Upon the close of my term in office, I shall cause to be transferred to the United States for deposit in the Library at Abilene the bulk of my papers in the White House office, estimated to include several million documents.

2. Other documents, still in my possession, including the remainder of my Presidential papers, the papers accumulated by me before my inauguration as President, and other documentary materials, including books, still pictures, motion pictures, and sound recordings, shall be transferred to the United States for deposit in said Library from time to time as shall be agreed upon by the Administrator of General Services or his representative and me or my representative, except those papers and other documentary materials which shall, before or after my leaving the Office of President, be determined by me or my representative to be excluded from this offer by reason of private or personal interest in such papers or materials on my part or on the part of a member of my family.

3. The offer of the papers and other materials described in paragraphs 1 and 2 hereof is conditioned upon acceptance by the United States of the offer of the land and buildings comprising the Eisenhower Library at Abilene, Kansas, and upon its agreement to maintain and operate the Library at all times thereafter as a Presidential archival depository for the storage of

such papers and other materials, in accordance with the provisions of the Federal Property and Administrative Services Act of 1949, as amended, such acceptance and agreement to be effected within 90 days after the end of the period described in the second proviso to section 507(f)(1) of said Act.

4. All papers and other documentary materials which shall be transferred to the United States pursuant to the foregoing shall be kept in the Library permanently, subject to the right of the Administrator of General Services in his discretion (a) to make temporary loans thereof to such persons, organizations, or institutions as he shall determine, (b) to dispose by sale, exchange, or otherwise of any such papers or documentary materials which the Archivist of the United States may determine to have no permanent or historical interest or to be surplus to the needs of said Library, and (c) to remove from said Library any or all such papers or documentary materials if he deems it necessary to preserve them from threatened destruction.

5. All papers and other documentary materials transferred to the United States pursuant to the foregoing shall be accessible at all reasonable times to me, my son, my representative, or to other persons authorized in writing by me or my son to have access to such papers.

6. It is my purpose to make the papers and other documentary materials donated to the United States by the terms of this instrument available for purposes of serious research as soon as possible and to the fullest extent possible.

However, since the President of the United States is the recipient of many confidences from others, and since the inviolability of such confidences is essential to the functioning of the office of the Presidency, it will be necessary to withhold from public scrutiny certain papers and classes of papers for varying periods of time. In pursuance of this objective and in accordance with the provisions of Section 507(f)(3) of the Federal Property and Administrative Services Act of 1949, as amended, conditions are imposed on the use of my papers as provided in paragraphs 7 through 10 immediately following.

7. Subsequent to the execution of this instrument, the Administrator of General Services shall have the papers that are transferred to the United States reviewed and shall place under seal the following classes of materials:

   a. Papers that are security-classified pursuant to law or Executive Order, until such classification shall be removed.

   b. Papers the use of which may be prejudicial to the maintenance of good relations with foreign nations.

   c. Papers containing statements made by or to me in confidence.

   d. Papers relating to my family or private business affairs, and papers relating to the families or private business affairs of persons who have had correspondence with me.

   e. Papers containing statements about individuals which might be used to injure or harass them or members of their families.

   f. Such other individual files as I, or my representative, or the Administrator of General Services may specify.

8. Papers placed under seal shall not be made available to anyone or their contents divulged to anyone (including public officials) except (a) persons authorized under the terms of paragraph 5 above, and (b) officials and employees of the National Archives and Records Service when performing essential archival work processes on such papers under the supervision of the Administrator of General Services.

9. All papers placed under seal in accordance with the foregoing provisions shall be reexamined from time to time by officials and employees of the National Archives and Records Service under the direction of the Administrator of General Services and, subject to approval by me or my representative, shall be opened to research use as soon as the passage of time or other circumstances have removed the conditions that required that they be put under seal.

10. All competent private persons interested in using my papers for serious scholarly research shall be granted equal access to those that are not withheld from use according to the foregoing, subject to the regulations issued by the Administrator of General Services governing the use of papers and other documentary materials in the Library.

11. Title to my papers and other documentary materials and the literary property rights in my papers, shall pass to the United States as such papers and materials are transferred to the United

States under the terms and conditions herein expressed, except that I reserve to myself and to my heirs (a) a right to make any use of any of these papers in writing for publication, and (b) literary property rights in any works that I have written or may hereafter write for publication. These reservations include the right to license any publisher of any such work.

12. My representative for purposes of paragraphs 2, 5, 7, 8 and 9 shall be such person or persons as I may designate in a letter filed with the Administrator of General Services. In the event that at any time after my death there should be no representative so designated, my representative shall be my son John Eisenhower, or such person or persons as he may designate in the same manner.

The detailed conditions described in this letter have been drawn up in accordance with known precedents and with the cooperation of officials of your office and of the National Archives. Permit me to express my deep appreciation of the help that all these individuals have given me.

With personal regard,

Sincerely,

/s/Dwight V. Eisenhower

The Honorable Franklin Floete
Administrator of General Services
Washington, D.C.

Honorable Bernard L. Boutin
Administrator of General Services
Washington, D.C. 20405

Dear Mr. Boutin:

FIRST: The late John Fitzgerald Kennedy had said many times both publicly and privately that it was his intention to place certain of his papers and other historical materials in a Presidential archival depository in Massachusetts, in the form of a Library bearing his name, and had encouraged, and participated in, and arranged for the planning of such an institution.

SECOND: Accordingly, in fulfillment of such stated intention and arrangement, it is our desire to give and deliver to the United States of America for the purpose of ultimate deposit in the said Presidential archival depository in Massachusetts, the papers, documents, historical materials, mementos, objects of art, and other memorabilia, including books, motion pictures, still pictures and sound recordings, hereinafter called "Materials," formerly belonging to and relating to the life and work of John Fitzgerald Kennedy, and which he intended should be so deposited.

THIRD: Therefore, we, the undersigned Jacqueline Bouvier Kennedy and the Executors and Trustees of the estate of John Fitzgerald Kennedy, deceased, hereinafter called the "Donors," hereby convey, assign, give, and donate to the United States of America, hereinafter called the "Donee," effective as of November 22, 1963, and subject to the conditions and restrictions hereinafter set forth, all of our right, title, and interest to the Materials above described, hereinafter called "Materials," as our right, title, and interest may appear, including but not limited to those Materials now stored at the White House, the Executive Office Building, The National

Archives Building, or at such other place or places where such Materials may be found, subject, however, to the specific understanding and agreement that:

(i) This gift and transfer shall not and is not intended to apply to or embrace such items as John Fitzgerald Kennedy had not intended to be deposited in said Presidential archival depository, or which are determined by the Donors to be of special or private interest to the personal, family and business affairs of John Fitzgerald Kennedy, his wife and children, parents, brothers and sisters.

(ii) The Donors shall have and specifically reserve the right to retain title and possession and to regain possession of any items that the Donors in their sole discretion may determine in accordance with this paragraph the Third are excluded from the purview of this gift, irrespective of the fact that such items may have been theretofore delivered to the Donee.

(iii) For the purposes of effectuating the provisions of subparagraphs (i) and (ii) of this paragraph the Third, the Donors shall have and specifically reserve the right to examine, at any time or from time to time prior to January 1, 1967, either themselves or through authorized representatives, any Materials from time to time in the possession or custody or under the control of the Donee, and wheresoever the same may be situated, for the purpose of determining and designating any such Materials as being excluded from the purview of this gift, provided, however, that examination of security-classified information shall be in accordance with applicable law or Executive Order relating to security-classified defense information.

(iv) Thus we shall, as soon as is reasonably possible, and upon written notice from the Donors of such designation, deliver to the Donors any items so designated by the Donors pursuant to subparagraph (iii) of this paragraph the Third as excluded from the purview of this gift.

(v) Mrs. Jacqueline Bouvier Kennedy shall have and specifically reserves the right to borrow from the Donee without formality such materials to which this transfer applies as she may wish for her personal use, examination, or display either by herself or by anyone she may select or approve, and any Material so borrowed shall be returned to the Donee within a reasonable period of time.

FOURTH: All Materials to which this transfer is applicable shall be maintained by the United States and stored at such place or places as may be designated by the Administrator of General Services until the completion and acceptance by the United States, pursuant to section 507(f) of the Federal Property and Administrative Services Act of 1949, as amended, of the proposed John F. Kennedy Library, at which time the Materials shall be deposited in that Library and administered in accordance with the pertinent provisions of that Act.

FIFTH: It is the Donors' wish that all Materials donated to the Donee hereunder be made available for research use as soon as possible and to the fullest extent possible. The Donors, however, desire to guard against the possibility of the Materials being used to injure, embarrass, or harass any person and otherwise properly to safeguard the interests of the United States. Therefore, all Materials to which this transfer applies are accepted and shall be held by the Donor subject to the following restrictions and conditions:

(i) Donors shall have and hereby reserve the right to restrict the use and availability of any Materials to which this transfer applies, and irrespective of the time when such Materials may have been, or may be delivered to the Donor, for such time or times as the Donors in their sole discretion may from time to time or at any time specify, and such restrictions shall be adhered to and observed in all respects for as long a period as the Donors shall have specified or until such restrictions are revoked or terminated by the Donors or by persons legally qualified to act on their behalf with respect thereto. Any Materials so designated in writing by the Donors as restricted shall be known and are hereinafter referred to as "Donors' Restricted Material," and shall be placed under seal, it being understood, of course, that Donor Restricted Materials shall be accessible to the Archivist of the United States or designated members of his staff for the performance of such archival work processes as may be requested by the Donors, but not otherwise.

(ii) The Archivist of the United States or designated members of his staff shall review the Materials to which this transfer is applicable, except Donors Restricted Material, for the purpose of classifying such Materials. Any Materials which fall within the following categories shall be designated by the Archivist and are hereinafter referred to as "Archivist Restricted Material," and shall be placed under seal:

(a) Materials containing statements which may in any manner be used to injure, embarrass, or harass any person, or Materials which may in any manner be prejudicial to the conduct of foreign relations of the United States of America, or materials containing statements made by or to John Fitzgerald Kennedy in confidence.

(b) Defense information that has been security-classified pursuant to law or Executive Order: *Provided that* such information may be declassified or otherwise made available in accordance with the procedures established by law or Executive Order governing availability of security-classified information.

(c) Materials that relate to the personal, family, and business affairs of John Fitzgerald Kennedy and his family, including such affairs of Mrs. Jacqueline Bouvier Kennedy, and the mother, father, sisters, and brothers of John Fitzgerald Kennedy.

(iii) The review and classification of the Materials hereinabove provided for shall be performed by and in collaboration between the Donors or their designated representatives and the Administrator of General Services or his delegatees and shall be completed within the shortest reasonable period of time after the Materials have been deposited in the John Fitzgerald Kennedy Library in Massachusetts.

(iv) Until such time as the review and publication of the Materials, as hereinabove provided for, has been completed, no person shall be permitted access thereto except the donors, persons given written authorization by the donors, and employees of the General Services Administration performing archival work processes on such Materials, provided, however, that access to Materials which are security-classified shall be in accordance with applicable law and Executive Order relating to security-classified defense information.

SIXTH: Except as otherwise provided herein, all Archivist Restricted Materials shall be available only to

employees of the General Services Administration performing archival work processes on such Materials and to the Donors or other persons given written authorization by any of the Donors, provided, however, that access to Archivist Restricted Materials which are security-classified shall be in accordance with applicable law or Executive Order relating to security-classified defense information.

SEVENTH: The archivist of the United States or his designated representative shall review from time to time Archivist Restricted Materials, and shall remove the restriction from such materials and make them available for research use as soon as the passage of time or other circumstances no longer require their being kept under restriction, provided, however, that notwithstanding anything otherwise or to the contrary in this instrument contained, no restrictions shall be removed in respect of the materials described in Article *Fifth* ii (c) without the prior written consent of the donors.

EIGHTH: The Donors hereby assign to the United States of America all of their literary property rights in all Materials, excluding Donors' Restricted Material during the period of restriction, except that the donors reserve to themselves (a) the right to make any use of such Materials and (b) all literary property rights in any manuscript or other writings that John Fitzgerald Kennedy wrote for publication, including the right to license the publication of such material.

NINTH: All competent persons interested in using the materials for purposes of serious research shall be granted equal access to unrestricted materials.

TENTH: As used herein, the word "Donors" shall mean Mrs. Jacqueline B. Kennedy, and the Executors of and the Trustees under the Last Will and Testament of John

Fitzgerald Kennedy from time to time qualified and serving.

/s/Jacqueline B. Kennedy
Donor

/s/Jacqueline B. Kennedy
/s/Robert F. Kennedy
/s/Edward M. Kennedy
Donors

By virtue of section 507(e) of the Federal Property and Administrative Services Act of 1949, as amended (44 U.S.C. 397(e)), the foregoing gift of the papers and other historical materials of the late President John Fitzgerald Kennedy is accepted.

THE UNITED STATES OF AMERICA
Acting by and Through
/s/Lawson B. Knott, Jr.
Acting Administrator of
General Services

Date: February 25, 1965

May 5th, 1965.

Honorable Lawson B. Knott, Jr.
Acting Administrator
General Services Administration
Washington, D.C. 20405

Dear Mr. Knott:

Reference is made to the Agreement between the United States of America and Mrs. Jacqueline B. Kennedy and

the Executors of the Estate of John F. Kennedy dated February 25, 1965, concerning the transfer of materials formerly belonging to and relating to the life and work of John Fitzgerald Kennedy to the United States of America.

Notwithstanding any of the restrictions imposed on access to the materials in the referenced February 25, 1965 Agreement, except the materials specified in Article Fifth ii(c) thereof, the Archivist of the United States is authorized to make available to President Lyndon B. Johnson, while in office, any materials or information with respect thereto, relating to or required in connection with the transition of the Office of President from the late President John F. Kennedy to President Johnson, or otherwise requested by President Johnson in connection with performance of the duties of the Office of President.

/s/Jacqueline B. Kennedy
Donor

/s/Jacqueline B. Kennedy
/s/Bob Kennedy
/s/Edward Kennedy
Donor

Exhibit B

THE WHITE HOUSE
Washington

August 13, 1965

Dear Mr. Knott:

It has long been my belief that the papers and other historical materials of a President constitute a vital part

of our Nation's historical heritage and that such papers and materials should be permanently preserved and made available for scholarly research and study.

You are aware that it also has long been my intention to donate my papers and other historical materials to the United States for ultimate deposit in a Presidential Archival Depository as provided by Section 507(f) of the Federal Property and Administrative Services Act of 1949, as amended (44 U.S.C. 397(f)).

You are also aware that the University of Texas has advised me of its intent, consistent with its educational purposes and objectives, to provide, as its expense, an appropriate site within the principal academic environs of the University of Texas, and to construct thereon a suitable Presidential Archival Depository to be known as the Lyndon Baines Johnson Library and to turn over, dedicate, and make available the space and facilities so to be constructed, furnished, and equipped by it, to the United States for its use in perpetuity pursuant to the aforesaid authority, as a Presidential Archival Depository for the housing, preservation, display, and appropriate use of my Presidential papers and other historical materials.

I have indicated to the University of Texas and publicly announced my approval of its proposal.

Accordingly, and in furtherance of the public purposes which will thus be served, I hereby offer as a gift to the United States for the purpose of ultimate deposit in the said Presidential Library my Presidential and other papers, documents, historical materials, mementos, objects of art, and other memorabilia, including books, motion pictures, still pictures, and sound recordings, all hereinafter called "Materials" belonging to me or in my possession which relate to my life and work, subject to

the condition that these Materials be accepted, preserved, and made available by the United States under the following conditions:

1. As an initial step the Materials shall be accepted by the United States for deposit in the National Archives pursuant to Section 507(e) of the Act, supra, until the completion and acceptance by the United States of the above-described Lyndon Baines Johnson Library at which time the Materials shall be deposited in that Library and administered in accordance with the pertinent provisions of the Act, supra.

2. It is my purpose to make the papers and other historical materials referred to herein available for the purpose of study and research as soon as possible and to the fullest possible extent. However, since the President of the United States is the recipient of many confidences from others, and since the inviolability of such confidence is essential to the functioning of the constitutional office of the Presidency, it will be necessary to withhold from public scrutiny certain papers and classes of papers for varying periods of time. Therefore:

(a) I hereby reserve the right to restrict the use and availability of any Materials to which this agreement applies, irrespective of the time when such Materials may have been, or may be delivered to the United States, for such time as I, in my sole discretion, may from time to time specify, and such restrictions shall be adhered to and observed in all respects for as long a period of time as may be specified or until such restrictions are revoked or terminated by me or persons authorized to act on my behalf with respect thereto, or as otherwise provided in this agreement.

(b) During my tenure as President of the United States any Materials accepted and deposited pursuant to paragraph 1, above, shall be made available by display or otherwise for public inspection, research or other use subject to restrictions (1) imposed at time of delivery of possession thereof to the United States; (2) as otherwise provided for in this agreement; and (3) as may be imposed by me or by persons authorized to act for me with regard thereto.

(c) Archival personnel of the United States designated by the Administrator of General Services shall review the Materials to which this agreement applies and any Materials in the following categories shall be placed under seal of restriction:

(i) Materials containing statements which may in any manner be used to injure, embarrass, or harass any person, or Materials which may in any manner be prejudicial to the conduct of foreign relations of the United States of America, or Materials containing statements made by or to me in confidence.

(ii) Defense information that has been security classified pursuant to law or Executive order: *Provided that* such information may be declassified or otherwise made available in accordance with the procedures established by law or Executive order governing availability of security-classified information.

(iii) Papers relating to my family or private affairs, and papers relating to the families or private affairs of persons who have had correspondence with me.

(d) All Material restricted pursuant to this agreement shall be reviewed from time to time by Archival personnel designated by the Administrator of General Services, the restrictions removed therefrom, and the Materials made available for public display and research use as soon as the passage of time or other circumstances no longer require such Materials being kept under restriction: *Provided that* restrictions imposed on Materials by paragraph 2(b), above, shall not be removed during my tenure as President without my personal approval or the approval of persons authorized to act for me with respect thereto.

(e) Materials placed under restriction pursuant to this agreement shall not be made available to anyone or their contents divulged to anyone (including public officials) except (1) persons authorized under the terms of paragraph 5 below and (2) Archival personnel designated by the Administrator of General Services when performing essential archival work processes on such papers under the supervision of the Administrator of General Services: *Provided that* access to security-classified materials shall be made available in accordance with the procedures established by law or Executive orders.

3. All unrestricted materials shall upon (a) deposit in the Lyndon Baines Johnson Library and (b) expiration of my tenure as President, be made available for public display and inspection, and made equally accessible to all competent private persons interested in using the materials for study and scholarly research purposes subject to regulations issued by the Administrator of General Services governing the use of materials in the Library: *Provided that* such

materials may be made available for display, inspection and research purposes prior to the expiration of my tenure as President with my personal approval.

4. This offer shall not and is not intended to apply to or embrace such items which I determine to be of special or private interest to the personal and family affairs of myself, my wife and children, and I specifically reserve the right to retain title and possession and to regain possession of any such items that I, in my sole discretion, may determine to be excluded from the purview of this gift, irrespective of the fact that such items may have been theretofore delivered to the United States.

5. All Materials transferred to the United States pursuant to this agreement shall be freely accessible to me or my wife or to persons designated by me in writing, subject to the provisions of applicable law and Executive orders governing availability of security-classified information.

6. Subject to restrictions imposed by or pursuant to this agreement, all Materials transferred to the United States pursuant to this agreement shall be subject to the right of the Administrator in his discretion (a) to make temporary loans thereof to such persons, organizations or institutions as he shall determine; (b) to dispose by sale, exchange or otherwise of any such papers or historical materials which he may determine to have no permanent value or historical interest or to be surplus to the needs of the Lyndon Baines Johnson Library; and (c) to remove from the said Library any and all of such papers or historical materials if he shall deem it necessary to preserve them from threatened destruction.

7. I hereby assign to the United States all my literary property rights in all papers transferred to the United States in accordance with the terms and conditions of this agreement, except that I reserve to myself and my heirs (a) the right to make any use of such papers and (b) all literary property rights in any works that I have written or may hereafter write for publication, including the right to license the publication of such material.

8. The offer of the Materials to which this agreement is applicable is conditioned upon the United States, acting by and through the Administrator of General Services, entering into an agreement with the University of Texas to utilize as a Presidential Archival Depository the space and facilities to be constructed, furnished, equipped and made available by it for such use without transfer of title, and upon agreement by the United States to maintain and operate the Library at all times thereafter as a Presidential Archival Depository for the preservation of such Materials, in accordance with the provisions of Section 507(f)(1) (44 U.S.C. 397(f)(1)) of the Federal Property and Administrative Services Act of 1949, as amended.

Sincerely,

/s/Lyndon B. Johnson

Honorable Lawson B. Knott, Jr.
Administrator of General Services
Washington, D.C.

Exhibit B

GENERAL SERVICES ADMINISTRATION
Washington 20405

Office of the Administrator

August 17, 1965

The President
The White House

Dear Mr. President:

It is an honor and pleasure on behalf of the United States to accept, in accordance with the powers vested in me by the Federal Property and Administrative Services Act of 1949, as amended, your generous offer of certain papers and other historical materials contained in your letter of August 13, 1965, under the conditions and restrictions which you have prescribed therein.

This priceless gift to the nation and scholars of this generation and those that follow will forever enrich our history and culture. I know that the memory of your selfless gesture will live eternally in the hearts of a grateful people.

Respectfully yours,

(Signed) Lawson B. Knott, Jr.
Lawson B. Knott, Jr.
Administrator

[Caption Omitted in Printing]

AFFIDAVIT

DISTRICT OF COLUMBIA, ss:

JAMES E. ROCAP III, being duly sworn under oath, deposes and says as follows:

1. I am a law clerk presently employed at the law firm of Miller, Cassidy, Larroca & Lewin, 1320 19th Street, N.W., Washington, D.C. 20036.

2. On Wednesday, October 30, 1974, I spoke with Mr. Richard Jacobs of the Office of Presidential Libraries of the National Archives. I requested of Mr. Jacobs the information and statistics shown on the chart attached hereto as Exhibit A and made a part hereof.

3. Mr. Jacobs' secretary gave me the information shown in the last three columns over the telephone, stating that she had requested and received the information from persons at each of the Presidential Libraries shown on the attached chart. The first column of statistics is taken directly from another chart given me by Mr. Jacobs on October 29, 1974, entitled "Comparative Statistical Summary of Presidential Libraries—Fiscal Year Ending June 30, 1974," attached hereto as Exhibit B and made a part hereof.

4. I am informed and believe that the information shown on Exhibits A and B is true.

/s/James E. Rocap, III
James E. Rocap, III

Subscribed and sworn to
before me this 11th day
of November, 1974.

/s/Sandra M. Martin
Notary Public

My Commission Expires April 30, 1970 [SEAL]

COMPARATIVE STATISTICAL SUMMARY OF PRESIDENTIAL LIBRARIES
FISCAL YEAR ENDING JUNE 30, 1973

	HOOVER	ROOSEVELT	TRUMAN	EISENHOWER	KENNEDY	JOHNSON
Size of Building						
Gross sq. ft.	28,461	53,474	80,550	83,627[2]	–	150,000
Net Usable ft.	25,751	42,545	55,330	70,694[3]	9,000	103,000
Site						
Land Area (acres)	33[1]	16	13	13.4	10	14
Holdings						
Manuscript on Paper (pgs.)	4,855,878	21,303,633	9,912,400	16,802,492	15,539,370	31,956,369
Manuscript on Microfilm (pgs.)	–	913,834	–	84,300	2,511,200	6,435,101
Photographs	9,867	101,685	64,087	86,179	63,107	510,780
Motion Picture Film (ft.)	77,274	264,747	155,658	587,030	1,568,945	585,405
Sound Recordings (discs & tapes)	579	3,280	2,366	2,287	2,222	6,490
Oral History Transcripts (pgs.)	10,089	611	9,369	14,376	21,688	1,197
Museum Objects	2,753	20,598	11,583	17,247	11,224	34,423
Books	16,751	35,200	41,947	23,275	17,116	11,496
Other Printed Items	20,582	55,254	53,448	18,809	21,404	16,069

[continued]

COMPARATIVE STATISTICAL SUMMARY OF PRESIDENTIAL LIBRARIES
FISCAL YEAR ENDING JUNE 30, 1973

	HOOVER	ROOSEVELT	TRUMAN	EISENHOWER	KENNEDY	JOHNSON
Reference Services (FY 1973)						
Researcher Visits	609	1,345	767	342	461	434
Items Furnished	6,533	19,525	35,226	10,821	13,542	20,946
Reproductions Furnished	18,243	156,825	18,046	34,047	6,926	67,568
Museum Visitors (FY 1973)	82,870	194,194	340,818	299,741	–	694,180
Cost of Operation (FY 1973)						
Appropriated Funds (estimated)	$231,000	$319,000	$300,000	$371,000	$445,000	$577,000
Trust Fund (estimated)	$ 34,980	$ 94,985	$115,720	$117,590	$ 3,575	$ 73,260
Positions Authorized (full-time permanent)	19	29	23	39	26	38

[1]Hoover Park now administered by National Park Service.

[2]Library Building, 55,000; Museum Building, 28,677.

[3]Library Building, 44,784; Museum Building, 25,910.

Presidential Library	Total Document Holdings as of June 30, 1973	Approximate Volume of Holdings Which are Presidential Papers as of October 30, 1974	Approximate Volume of Presidential Papers Restricted by Donor as of October 30, 1974	Approximate Volume of Presidential Papers Restricted By Security Classification as of October 30, 1974
Hoover	4,855,878	2,250,000	34,000	None
Roosevelt	21,303,633	10,256,000	41,700	26,700
Truman	9,912,400	6,048,000	21,168[1]	60
Eisenhower	16,802,492	12,783,500	2,465,000	350,000
Kennedy	15,539,370	10,000,000	62,000[2]	350,000
Johnson	31,956,369	22,470,220	107,200[3]	1,000,000

[1]414,000 papers have not yet been screened and remain closed. They are not included in the Truman figures.
[2]500,000 papers have not yet been screened and remain closed.
[3]8,538,980 papers have not yet been screened and remain closed.

Source: Office of Presidential Libraries, National Archives

September 6, 1974

Honorable Arthur F. Sampson
Administrator
General Services Administration
Washington, D. C.

Dear Mr. Sampson:

In keeping with the tradition established by other former Presidents, it is my desire to donate the United States, at a future date, a substantial portion of my Presidential materials which are of historical value to our Country. In donating these Presidential materials to the United States, it will be my desire that they be made available, with appropriate restrictions, for research and study.

In the interim, so that my materials may be preserved, I offer to transfer to the Administrator of General Services (the "Administrator"), for deposit, pursuant to 44 U.S.C. Section 2101, *et seq.*, all of my Presidential historical materials as defined in 44 U.S.C. Section 2101 (hereinafter "Materials"), which are located within the metropolitan area of the District of Columbia, subject to the following:

1. The Administrator agrees to accept solely for the purpose of deposit the transfer of the Materials, and in so accepting the Materials agrees to abide by each of the terms and conditions contained herein.

2. In the event of my death prior to the expiration of the three-year time period established in paragraph 7A hereof, the terms and conditions contained herein shall be binding upon and inure to the benefit of the executor of my estate for the duration of said period.

3. I retain all legal and equitable title to the Materials, including all literary property rights.

4. The Materials shall, upon acceptance of this offer by the Administrator, be deposited temporarily in an existing facility belonging to the United States, located within the State of California near my present residence. The Materials shall remain deposited in the temporary California facility until such time as there may be established, with my approval, a permanent Presidential archival depository as provided for in 44 U.S.C. Section 2108.

5. The Administrator shall provide in such temporary depository and in any permanent Presidential archival depository reasonable office space for my personal use in accordance with 44 U.S.C. Section 2108(f). The Materials in their entirety shall be deposited within such office space in the manner described in paragraph 6 hereof.

6. Within both the temporary and any permanent Presidential archival depository, all of the Materials shall be placed within secure storage areas to which access can be gained only by use of two keys. One key, essential for access, shall be given to me alone as custodian of the Materials. The other key may be duplicated and entrusted by you to the Archivist of the United States or to members of his staff.

7. Access to the Materials within the secure areas, with the exception of recordings of conversations in the White House and the Executive Office Building which are governed by paragraphs 8 and 9 hereof, shall be as follows:

A. For a period of three years from the date of this instrument, I agree not to withdraw from deposit any originals of the Materials, except as provided in subparagraph B below and paragraph 10 herein. During said three-year period, I may make reproductions of any of the originals of the Materials and withdraw from deposit such reproductions for any use I may deem appropriate. Except as provided in subparagraph B below, access to the Materials shall be limited to myself, and to such persons as I may authorize from time to time in writing, the scope of such access to be set forth by me in each said written authorization. Any request for access to the Materials made to the Administrator, the Archivist of the United States or any member of their staffs shall be referred to me. After three years I shall have the right to withdraw from deposit without formality any or all of the Materials to which this paragraph applies and to retain such withdrawn Materials for any purpose or use I may deem appropriate, including but not limited to reproduction, examination, publication or display by myself or by anyone else I may approve.

B. In the event that production of the Materials or any portion thereof is demanded by a subpoena or other order directed to any official or employee of the United States, the recipient of the subpoena or order shall immediately notify me so that I may respond thereto, as the owner and custodian of the Materials, with sole right and power of access thereto and, if appropriate, assert any privi-

lege or defense I may have. Prior to any such production, I shall inform the United States so it may inspect the subpoenaed materials and determine whether to object to its production on grounds of national security or any other privilege.

8. The tape recordings of conversations in the White House and Executive Office Building which will be deposited pursuant to this instrument shall remain on deposit until September 1, 1979. I intend to and do hereby donate to the United States, such gift to be effective September 1, 1979, all of the tape recordings of conversations in the White House and Executive Office Building conditioned however on my continuing right of access as specified in paragraph 9 hereof and on the further condition that such tapes shall be destroyed at the time of my death or on September 1, 1984, whichever event shall first occur. Subsequent to September 1, 1979 the Administrator shall destroy such tapes as I may direct. I impose this restriction as other Presidents have before me to guard against the possibility of the tapes being used to injure, embarrass, or harass any person and properly to safeguard the interests of the United States.

9. Access to recordings of conversations in the White House and Executive Office Building within the secure areas shall be restricted as follows:

   A. I agree not to withdraw from deposit any originals of the Materials, except as provided in subparagraph B and paragraph 10 below, and no reproductions shall be made unless there is mutual agreement. Access to the tapes

shall be limited to myself, and to such persons as I may authorize from time to time in writing, the scope of such access to be set forth by me in each said written authorization. No person may listen to such tapes without my written prior approval. I reserve to myself such literary use of the information on the tapes.

   B. In the event that production of the Materials or any portion thereof is demanded by a subpoena or other order directed to any official or employee of the United States, the recipient of the subpoena or order shall immediately notify me so that I may respond thereto, as the owner and custodian of the Materials, with sole right and power of access thereto and, if appropriate, assert any privilege or defense I may have. Prior to any such production, I shall inform the United States so it may inspect the subpoenaed materials and determine whether to object to its production on grounds of national security or any other privilege.

10. The Administrator shall arrange and be responsible for the reasonable protection of the Materials from loss, destruction or access by unauthorized persons, and may upon receipt of an appropriate written authorization from the Counsel to the President provide for a temporary re-deposit of certain of the Materials to a location other than the existing facility described in paragraph 4 herein, provided however that no dimunition of the Administrator's responsibility to protect and secure the Materials from loss, destruction,

unauthorized copying or access by unauthorized persons is affected by said temporary re-deposit.

11. From time to time as I deem appropriate, I intend to donate to the United States certain portions of the Materials deposited with the Administrator pursuant to this agreement, such donations to be accompanied by appropriate restrictions as authorized by 44 U.S.C. Section 2107. However, prior to such donation, it will be necessary to review the Materials to determine which of them should be subject to restriction, and the nature of the restrictions to be imposed. This review will require a meticulous, thorough, time-consuming analysis. If necessary to fulfill this task, I will request that you designate certain members of the Archivist's staff to assist in this review under my direction.

If you determine that the terms and conditions set forth above are acceptable for the purpose of governing the establishment and maintenance of a depository of the Materials pursuant to 44 U.S.C. Section 2101 and for accepting the irrevocable gift of recordings of conversations after the specified five-year period for purposes as contained in paragraph 8 herein, please indicate your acceptance by signing the enclosed copy of this letter and returning it to me. Upon your acceptance we both shall be bound by the terms of this agreement.

Sincerely,
/s/ Richard M. Nixon

Accepted by: Arthur F. Sampson
Administrator
General Services Administration

[Copy Omitted in Printing]

ANSWER

Defendants, by their undersigned attorneys, in answer to the Complaint, herein admit, deny, and allege as follows:

1. The statements contained in paragraph 1 of the Complaint are legal conclusions not requiring answer.

2. The statements contained in the first sentence of paragraph 2 of the Complaint are legal conclusions not requiring answer. For lack of knowledge or information sufficient to form a belief, defendants deny the remaining allegations contained in paragraph 2, except that they admit that the Administrator is found in the District of Columbia.

3-5, inclusive. Defendants admit the allegations contained in paragraphs 3-5, inclusive.

6. For lack of knowledge or information sufficient to form a belief, defendants deny the allegations contained in paragraph 6 of the Complaint, except that they admit that materials presently located within the White House complex, including the Executive Office Building, include correspondence and other items deriving from the period of time represented by the Presidency of Richard Nixon and that despite requests, said materials have not been sent to Mr. Nixon.

7. For lack of knowledge or information sufficient to form a belief, defendants deny the allegations contained in paragraph 7 of the Complaint, except that they admit that materials located within the White House complex, requested by Mr. Nixon, have not been sent to him.

8. Defendants admit the allegations contained in paragraph 8 of the Complaint.

9. The statements contained in paragraph 9 of the Complaint are legal conclusions not requiring answer but, to the extent they may be deemed allegations of fact, they are denied for lack of knowledge or information sufficient to form a belief.

10. For lack of knowledge or information sufficient to form a belief, defendants deny the allegations contained in paragraph 10 of the Complaint.

11. For lack of knowledge or information sufficient to form a belief, defendants deny the allegations contained in paragraph 11 of the Complaint, except that they admit that materials generated within the White House and the Executive Office of the President, during Mr. Nixon's Presidency, reflect communications between himself and his aides relating to the conduct of the Office of the President. The remaining statements contained in paragraph 11 are not allegations of fact but are legal conclusions not requiring answer.

12. For lack of knowledge or information sufficient to form a belief, defendants deny the allegations contained in the first sentence of paragraph 12. The statement contained in the second sentence of paragraph 12 is not an allegation of fact requiring answer.

13. For lack of knowledge or information sufficient to form a belief, defendants deny the allegations contained in paragraph 13 of the Complaint.

14. Defendants deny the allegations contained in the first sentence of paragraph 14 and admit the allegations contained in the second sentence of paragraph 14.

15. Defendants deny the allegations contained in paragraph 15 of the Complaint, except that they admit that on or about September 3, 1974, Philip W. Buchen, counsel to the President, and others entered into discussions with a representative of plaintiff concerning

the deposit and safekeeping of materials created and generated during the Presidency of Richard Nixon. Defendants further aver that said discussions culminated in an agreement between Richard Nixon and Arthur Sampson dated September 6, 1974, and the Court is respectfully referred to that agreement for its terms and conditions.

16. Defendants deny the allegations contained in paragraph 16 of the Complaint, except they admit that on or about September 3, 1974, representatives of plaintiff were advised by Philip Buchen, or his representatives, that the Attorney General of the United States had been requested to provide an opinion with respect to the ownership of materials created and generated during the Presidency of Richard Nixon. Defendants further aver that on September 6, 1974, an opinion of the Attorney General on the subject was delivered, and the Court is respectfully referred to the opinion for its contents.

17. For lack of knowledge or information sufficient to form a belief, defendants deny the allegations contained in paragraph 17.

18. Defendants deny the allegations contained in paragraph 18 of the Complaint, except they admit that an agreement was entered into by plaintiff and defendant Administrator dated September 6, 1974, and the Court is respectfully referred to that agreement for its terms and conditions.

19-23, inclusive. Defendants deny the allegations contained in paragraphs 19-23, inclusive, except that they admit that an agreement was entered into between plaintiff and defendant Administrator dated September 6, 1974, and the Court is respectfully referred to that agreement for its terms and conditions.

24. Defendants deny the allegations contained in paragraph 24 of the Complaint, except they admit that on or about September 12, 1974, members of the Watergate Special Prosecution Force met with Philip Buchen and members of his staff and that materials created and generated during the Presidency of Mr. Nixon were not transferred to California.

25. Defendants deny the allegations contained in paragraph 25 of the Complaint, except that they admit that for several weeks prior to October 17, 1974, representatives of plaintiff participated in discussions and negotiations with members of the Watergate Special Prosecution Force and that representatives of the Watergate Special Prosecutor indicated an intention to serve a subpoena duces tecum on Mr. Buchen with respect to materials created and generated during the Presidency of Richard Nixon.

26. Defendants deny the allegations contained in paragraph 26 of the Complaint, except that they admit that Richard Nixon requested that steps be taken to implement the agreement of September 6, 1974.

27. Defendants deny the allegations contained in paragraph 27 of the Complaint, except they admit that subsequent demands for implementation of the depository agreement were made to Philip Buchen and others.

28. In answer to the allegations contained in paragraph 28 of the Complaint, defendants admit the filing of the actions referred to therein and respectfully refer the Court to such actions for a recitation of the issues involved therein.

29. For lack of knowledge or information sufficient to form a belief, defendants deny the allegations contained in paragraph 29 of the Complaint.

30. Defendants deny the allegations contained in paragraph 30 of the Complaint, except they admit that pursuant to a civil subpoena demand and order of the District Court in *Dellums, et al. v. Powell, et al.*, Civil Action No. 71-2271 (D.D.C.), Philip Buchen or his agents conducted a search of certain tape recordings created during the Presidency of Richard Nixon and that Philip Buchen is in receipt of a civil subpoena in *Halperin, et al. v. Kissinger, et al.*, Civil Action No. 73-1187 (D.D.C.), and the Court is respectfully referred to said subpoena for its terms and conditions.

31. Defendants deny the allegations contained in paragraph 31 of the Complaint, except they admit that the Special Prosecutor served a series of eight (8) subpoenas duces tecum on Philip Buchen, and the Court is respectfully referred to said subpoenas for their terms and conditions; that said subpoenas were thereafter withdrawn, and that on November 9, 1974, an agreement was entered into between defendant Administrator, Philip Buchen, H. Stuart Knight, and the Watergate Special Prosecutor, and the Court is respectfully referred to said November 9th agreement for its terms and conditions.

32. Defendants deny the allegations contained in paragraph 32 of the Complaint, except they admit that on November 11, 1974, plaintiff sought a temporary restraining order in Civil Action No. 74-1518 and that a joint motion of defendants and the Special Prosecutor for modification of the temporary restraining order previously issued in Civil Action No. 74-1518 has been filed and is pending before that Court.

33. Defendants deny the allegations contained in paragraph 33 of the Complaint, except they admit that a bill (S. 4016) was introduced in the U. S. Senate on

September 18, 1974, by Senators Nelson, Ervin, Javits, Ribicoff, Metcalf, Huddleston, Chiles, Percy, Muskie, Hatfield, Dole, Montoya, and Stevenson, and the Court is respectfully referred to the language of S. 4016 for its provisions.

34. Defendants deny the allegations contained in paragraph 34 of the Complaint, except they admit Senators Ervin and Montoya served as Chairman and member, respectively, of the Ervin Committee which litigated with plaintiff Nixon, and the Court is respectfully referred to the opinion of the Court of Appeals for its ruling and the nature of the controversy.

35. Defendants deny the allegations contained in paragraph 35 of the Complaint, except they admit that S. 4016 was referred to the Senate Committee on Government Operations which reported it to the Senate without prior hearing and that the Senate passed S. 4016 on October 4, 1974.

36. Defendants deny the allegations contained in paragraph 36 of the Complaint, except they admit that S. 4016 was sent to the Committee on House Administration on October 7, 1974, which reported S. 4016 to the House of Representatives on November 27, 1974, that said Committee considered matters pertaining to the subject matter of S. 4016 and that the House of Representatives passed S. 4016, as amended, on December 3, 1974.

37. Defendants deny the allegations contained in paragraph 37 of the Complaint, except they admit that the House Judiciary Committee subpoenaed certain materials in connection with the impeachment proceedings against then President Nixon.

38. Defendants deny the allegations contained in paragraph 38 of the Complaint, except they admit that

members of the House of Representatives at the time S. 4016 passed the House were parties to civil litigation in which access was sought to documents and materials generated and created during the Presidency of Richard M. Nixon.

39. Defendants admit the allegations contained in paragraph 39 of the Complaint.

40-50, inclusive. Defendants deny the allegations contained in paragraphs 40-50, inclusive, of the Complaint and respectfully refer the Court to the provisions of Public Law 93-526 for its terms and conditions.

51-64, inclusive. Defendants deny the allegations contained in paragraphs 51-64, inclusive, of the Complaint.

Defendants deny each and every allegation of the Complaint not hereinabove specifically admitted, qualified or denied.

First Defense

The Complaint fails to state a claim upon which relief can be granted.

Second Defense

The Court lacks jurisdiction over the subject matter of this action to the extent that certain of the claims set forth in the Complaint cannot be adjudicated until after the promulgation of regulations called for by Public Law 93-526.

Third Defense

The Court lacks jurisdiction over the subject matter of this action.

WHEREFORE, defendants pray that the action be dismissed with costs and that the Court grant such further relief as may seem just and proper

Respectfully submitted,

/s/Carla A. Hills
CARLA A. HILLS
Assistant Attorney General

/s/Earl J. Silbert
EARLE J. SILBERT
United States Attorney

/s/Irving Jaffe
IRVING JAFFE
Deputy Assistant Attorney General

/s/Irwin Goldbloom
IRWIN GOLDBLOOM
Deputy Assistant Attorney General

/s/Bernard J. Carl
BERNARD J. CARL
Special Assistant to the
Assistant Attorney General

/s/Jeffrey Axelrad
JEFFREY AXELRAD
Attorney, Department of Justice

Attorneys, Department of Justice
Washington, D.C. 20530
Telephone: 202-739-3300
Attorneys for Defendants

[Caption Omitted in Printing]

ORDER

The Court, having received with respect to two preliminary questions the submissions of the parties and the *amici* by means of brief and oral argument, has concluded as follows:

1. The Court has, as required by law, been properly convened for the purpose of entertaining and disposing of the pending claim by the plaintiff for injunctive relief against the enforcement, operation or execution of the Presidential Recordings and Materials Preservation Act, P.L. 93-526, 88 Stat. 1965 (1974), for repugnance to the Constitution of the United States. The Court finds that there is nothing in the statute, and particularly in Section 105(a) thereof, or in the meagre legislative history underlying it, negating the continuing necessity that claims of this nature be decided by a three-judge-court convened and constituted under the provisions of 28 U.S.C. 2282, 2284.

2. The Court is not disposed at this time to request the United States Court of Appeals to dissolve the stay issued by it in the so-called consolidated cases presently pending before a single judge of the District Court. (C.A. Nos. 74-1518, 74-1533 and 74-1551.) The Court is of the view in this connection, that the central purpose of Congress in relation to all pending litigation is to have an early—and prior—determination of the Act's constitutionality; and that in the peculiar circumstances of this case that purpose is best served by this Court proceeding to decide that question before the entry of any judgment in the consolidated cases.

3. This Court shall hear and determine the sole issue of the propriety of injunctive relief against the

enforcement of the Presidential Recordings and Materials Preservation Act. P.L. 93-526, on the grounds of its unconstitutionality.

4. It appears to the Court that there is no necessity for separate consideration of the pending request for preliminary relief.

In light of these conclusions, and for the purposes of proceeding in as orderly and efficient a manner as possible, it is hereby ORDERED that:

1. The pending motions for intervention filed by the Special Prosecutor, Reporters Committee, et al., Lillian Hellman, et al., and Jack Anderson are granted, except that (a) such intervention shall be for the limited purpose of being heard on the single issue of the claim for injunctive relief, and (b) in view of the essentially common interests of the three last-named movants with respect to that claim, their intervention shall be as defendants and on a joint basis.

2. A pre-hearing conference is hereby scheduled on the 29th day of May, 1975, at 2 o'clock p.m. in the Chambers of Judge Aubrey E. Robinson, Jr.

3. The parties, including intervenors, shall submit to the Court within fifteen (15) days from the date hereof, memoranda of their views on the following:

a) Procedural matters requiring pre-hearing consideration.

b) Evidentiary matters requiring pre-hearing consideration

c) Proposed briefing schedule and suggested hearing date.

d) Such other matters as may be appropriate for an orderly and prompt determination of the issue in this case.

/s/Carl McGowan
CARL McGOWAN
UNITED STATES CIRCUIT JUDGE

/s/Edward A. Tamm
EDWARD A. TAMM
UNITED STATES CIRCUIT JUDGE

/s/Aubrey E. Robinson, Jr.
AUBREY E. ROBINSON, JR.
UNITED STATES DISTRICT JUDGE

DATE: May 1, 1975

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COMPLAINT BY INTERVENOR-PLAINTIFF FOR INJUNCTION, DECLARATORY JUDGMENT AND OTHER RELIEF

1. This is an action brought by Richard M. Nixon, former President of the United States, challenging the validity of an Act of Congress, the Presidential Recordings and Materials Preservation Act of 1974 (the 1974 Act) and seeking enforcement of a purported contract between him and defendant Arthur F. Sampson, Administrator of General Services, providing for the delivery to Mr. Nixon of certain documents and tape recordings (the records). Intervenor-plaintiff Jack Anderson (intervenor) seeks a declaratory judgment that the records were when they were created and are still United States government records subject to the Freedom of Information Act, 5 U.S.C. §552, which thereunder intervenor is entitled to examine and copy, and that nothing in the 1974 Act

reduces or limits intervenor's rights under the Freedom of Information Act; and further seeks a permanent injunction against defendants' continued withholding of the records in violation of the Freedom of Information Act.

Jurisdiction

2. The Court has jurisdiction of this action under §105 of the 1974 Act and of intervenor's claim pursuant to 5 U.S.C. §552(a)(3) and 28 U.S.C. §1331. The amount in controversy exceeds $10,000, exclusive of interest and costs.

Parties

3. Plaintiff Richard M. Nixon was President of the United States from January 20, 1969, to August 9, 1974.

4. Intervenor-plaintiff Jack Anderson is a reporter, newspaper columnist and radio commentator with 75 million readers and 100,000 listeners.

5. Defendant Administrator of General Services is designated by the 1974 Act as the official who is to have custody of the records and make them available to the public pursuant to regulation. The Administrator does or will pursuant to the Act have possession, custody and control of the records described in ¶6.

Facts

6. Between January 20, 1969, and August 9, 1974, plaintiff Nixon and other officials and employees of the Executive Office of the President of the United States and other officials and employees of the Executive branch of the government of the United States created and accumulated within the White House, the Executive Office Buildings and elsewhere, records, in the form of documents and tape recordings, of their activities

performed pursuant to and in the course of carrying out the duties and functions of their offices.

7. The records described in ¶6 presently are located within the District of Columbia under the custody and control of defendant Administrator.

8. On September 7, 1974, plaintiff Nixon transmitted and defendant Sampson accepted a letter purporting to recognize that the records are the personal property of plaintiff Nixon and purporting to accept the records for deposit by defendant Sampson under certain conditions, including the physical transfer of the records to a place near plaintiff Nixon's present residence in San Clemente, California.

9. On September 10, 1974, intervenor filed with defendant's agency, General Services Administration (GSA), a request under the Freedom of Information Act, 5 U.S.C. §552, and applicable G.S.A. regulations, for access to the records for the purpose of inspection and copying, and requesting that pending consideration of the request the records not be removed from their present location and custody.

10. On October 3, 1974, G.S.A. denied the request.

11. On October 8, 1974, intervenor appealed the denial. Intervenor is informed and believes that the appeal will likewise be denied and that to await formal action on the appeal would be futile. Intervenor has exhausted his administrative remedies.

12. On December 19, 1974, the President signed the 1974 Act into law. Under the Act defendant Administrator is to obtain possession of the records and is to issue regulations providing for public access to the records. The Act expressly provides that the access to be provided shall be no less than the access already provided by the Freedom of Information Act, 5 U.S.C. §552. Defendant

Administrator has asserted, nevertheless, through counsel that he may by regulation prevent access, and create new exemptions and limitations to access not provided in the Freedom of Information Act.

13. On December 20, 1974, plaintiff Nixon filed this action in this Court, challenging the validity, as repugnant to the Constitution, of the 1974 Act and seeking, in the alternative, either enforcement of the purported agreement of September 7, 1974, including the transfer of the records to a location near San Clemente, California, or the unconditional delivery of the records to him. If plaintiff Nixon obtains such relief, intervenor would be irrevocably injured and deprived forever of rights secured to him under the Freedom of Information Act, 5 U.S.C. §552.

Claim for Relief Against Defendants

14. Defendant Administrator may not, by regulation or otherwise, reduce or limit intervenor's access to the records by creating exemptions not provided in, or otherwise in derogation of, the Freedom of Information Act, 5 U.S.C. §552.

15. Defendant Administrator is forbidden by law, to wit, 44 U.S.C. §§2101-14, 2901-3314, and the 1974 Act to deliver the records to Richard M. Nixon or any other private individual, either pursuant to the September 7, 1974, agreement or otherwise; the records were not and are not the private personal property of Richard M. Nixon but at all times were and are records of the government of the United States of America.

16. The records are records within the meaning of the Freedom of Information Act, to which intervenor is entitled to access thereunder, the burden of proof to the contrary being upon defendant Administrator, who is

under a duty to preserve the records and provide intervenor access to them as provided in the Freedom of Information Act.

Cross-claim

17. Plaintiff Nixon's claim to ownership, possession and custody of the records is inconsistent with and if allowed would necessarily defeat intervenor's claim for access to the records as government records; an actual controversy exists between intervenor and plaintiff Nixon.

Relief Requested

Intervenor requests that this Court

18. Declare that the records are records within the meaning of the Freedom of Information Act.

19. Declare that intervenor is entitled to access to the records under the Freedom of Information Act.

20. Declare that the purported agreement between plaintiff Nixon and defendant Sampson of September 7, 1974, is unenforceable, null and void.

21. Declare that the 1974 Act preserves and does not reduce or limit intervenor's rights and the rights of all persons to access to the records provided in the Freedom of Information Act, 5 U.S.C. §552, as amended; and that the 1974 Act does not confer upon the Administrator authority, by regulation, to create new exemptions to disclosure not otherwise contained in the Freedom of Information Act.

22. Enjoin defendant Administrator from attempting or purporting by regulation or otherwise, to limit or reduce intervenor's access to the records by creating or purporting to create restrictions upon access or exemp-

tions from disclosure not otherwise provided or contained in the Freedom of Information Act.

/s/William A. Dobrovir
/s/signed by Joseph D. Gebhardt
WILLIAM A. DOBROVIR
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2005 L Street, N.W.
Washington, D.C. 20036
(202) 785-8919

Attorneys for Intervenor-Plaintiff

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ANSWER AND COUNTERCLAIM OF
HENRY S. RUTH, JR., SPECIAL PROSECUTOR

Intervenor-defendant Henry S. Ruth, Jr., Special Prosecutor, stating as and for his answer to the numbered paragraphs of the complaint:

1. Admits that this is a suit for injunctive and declaratory relief, but otherwise denies the allegations and conclusions of law contained in the description of the suit in paragraph 1.

2. Denies the allegations and conclusions of law of paragraph 2, but admits that many of the acts alleged in the complaint occurred in the District of Columbia.

3. - 5. Admits the allegations of paragraphs 3, 4, and 5.

6. - 7. Alleges that he lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 6 and 7.

8. Admits that plaintiff and other officials and employees of the federal government generated a substantial number of documents, papers, tapes, photographs, notes and other items during the period plaintiff served as President, and that many of these materials were retained within the White House or other government buildings, but alleges that he lacks knowledge or information sufficient to form a belief as to the truth of the other allegations of paragraph 8.

9. Denies the allegations and conclusions of law of paragraph 9.

10. Alleges that he lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 10.

11. Admits that many of the materials referred to in paragraph 11 relate to the conduct of the Office of the President and that communications between a President and his aides relating to the conduct of the Office of the President are presumptively privileged from disclosure to persons outside of the Executive Branch, but denies that a former President may invoke the privilege to prevent access to or use of the materials by the Executive Branch in connection with ongoing government business; further denies that the presumptive privilege only may be overcome upon demonstration of a specific need for relevant evidence in a criminal prosecution; and states that the opinion of the Supreme Court in *United States v. Nixon* speaks for itself, but denies that the opinion holds that a former President may invoke executive or presidential privilege.

12. Alleges that he lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 12.

13. Alleges that he lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 13.

14. Admits that Philip W. Buchen, Counsel to President Gerald R. Ford and custodian of the materials created and generated during the Presidency of Mr. Nixon (the "presidential materials"), after discussions with members of the Special Prosecutor's office, agreed not to allow any of the "presidential materials" to be transferred from their present location in the White House and other government buildings, but alleges that he lacks knowledge or information sufficient to form a belief as to the truth of the other allegations of paragraph 14.

15. Alleges that he lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 15.

16. Alleges that he lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 16, but admits that the Attorney General issued an opinion on September 6, 1974, which recognized a property interest of a former President in the materials of his Administration subject to the needs of the incumbent Administration for ongoing government business.

17. Alleges that he lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 17.

18. Admits that plaintiff and defendant Administrator entered into a letter agreement on September 7, 1974, but denies the other allegations and conclusions of law of paragraph 18.

19. - 23. Denies the conclusions of law of paragraphs 19 through 23, and states that the words of the agreement speak for themselves.

24. Admits that on September 12, 1974, Philip W. Buchen, after discussions with members of the Special Prosecutor's office, stated that he would not allow any of the "presidential materials" to be transferred from their present location in the White House and other government buildings pending discussions among representatives of plaintiff Nixon, the Special Prosecutor, and President Ford concerning access to and use by the Special Prosecutor of those "presidential materials" needed for the Special Prosecutor's ongoing investigations and prosecutions, but denies that this determination was first made on September 12, 1974, in that J. Fred Buzhardt, Counsel to former President Nixon, and Mr. Buchen made a similar determination on August 15, 1974, which was communicated to members of the Special Prosecutor's office, and denies the other allegations and conclusions of law of paragraph 24.

25. Admits that members of the Special Prosecutor's office negotiated with representatives of plaintiff concerning access to and use by the Special Prosecutor of those "presidential materials" which were needed for ongoing investigations and prosecutions, that the negotiations did not lead to any agreement, and that members of the Special Prosecutor's office stated their intention to serve a subpoena *duces tecum* on Mr. Buchen for certain of the "presidential materials," but denies the other allegations of paragraph 25.

26. - 27. Alleges that he lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraphs 26 and 27.

28. Admits the allegations of paragraph 28 that plaintiff filed a civil action against defendant Administrator, Mr. Buchen, and H. Stuart Knight on October 17, 1974 and that two other lawsuits concerning the

"presidential materials" were subsequently filed and consolidated with the action begun by plaintiff, and respectfully refers the Court to such actions for the determination of the parties and issues involved therein.

29. Alleges that he lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 29.

30. Alleges that he lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 30, but denies that any search conducted by Mr. Buchen pursuant to subpoena would violate any constitutional or other lawful rights or privileges of plaintiff.

31. Admits that the Special Prosecutor served eight subpoenas *duces tecum* on Mr. Buchen subsequent to October 17, 1974, that such subpoenas were withdrawn on November 9, 1974, and that defendant Administrator, Messrs. Buchen and Knight, and the Special Prosecutor entered into an Agreement on November 9, 1974, but denies the other allegations of paragraph 31 and states that the words of the Agreement speak for themselves.

32. Denies the allegations of paragraph 32, except insofar as they state that on November 11, 1974, plaintiff sought an order restraining implementation of the November 9 Agreement and the Special Prosecutor and defendants Sampson, Buchen and Knight sought an order allowing implementation of that Agreement, and that to date no order permitting implementation has been entered.

33. Alleges that he lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 33.

34. Alleges that he lacks knowledge or information sufficient to form a belief as to the truth of the

allegations of paragraph 34, but admits that Senators Ervin and Montoya had been members of the Senate Select Committee on Presidential Campaign Activities of the 93d Congress, 2d Session, and that that Committee had issued a subpoena *duces tecum* to then-President Nixon which was the subject of litigation. The Court is respectfully referred to the opinion of the Court of Appeals for its ruling.

35. - 39. Alleges that he lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraphs 35 thru 39, but admits that President Ford signed S. 4016, the Presidential Recordings and Materials Preservation Act, Public Law 93-526, on December 19, 1974, and that various Members of the House of Representatives who voted for that bill had earlier taken part in impeachment proceedings against then-President Nixon.

40. - 50. Denies the allegations and conclusions of law of paragraphs 40 thru 50, but states that the words of the Presidential Recordings and Materials Preservation Act speak for themselves.

51. - 61. Denies the allegations and conclusions of law of paragraphs 51 thru 61.

62. - 64. Denies the allegations and conclusions of law of paragraphs 62 thru 64.

The Special Prosecutor denies each and every allegation of the Complaint not hereinabove specifically admitted, qualified or denied.

FIRST DEFENSE

65. The Court lacks jurisdiction over the subject matter of this action insofar as it seeks an injunction or mandamus because of sovereign immunity.

SECOND DEFENSE

66. The complaint fails to state a claim upon which relief can be granted.

THIRD DEFENSE

67. The letter agreement of September 7, 1974, between plaintiff and defendant Administrator is void and unenforceable because of Public Law 93-526, the Presidential Recordings and Materials Preservation Act.

FOURTH DEFENSE

68. The letter agreement of September 7, 1974, between plaintiff and defendant Administrator is void and unenforceable because it was entered into in violation of 44 U.S.C. § § 2107 and 2108.

FIFTH DEFENSE

69. Plaintiff may not be granted equitable relief or mandamus to enforce the September 7, 1974, letter agreement between plaintiff and defendant Administrator because implementation of the terms of that agreement is a matter committed to the discretion of the United States and its officers.

SIXTH DEFENSE

70. The September 7, 1974, letter agreement between plaintiff and defendant Administrator does not bar access to the "presidential materials" by the incumbent Administration prior to their temporary deposit "in an existing facility belonging to the United States, located within the State of California."

SEVENTH DEFENSE

71. Plaintiff Nixon lacks standing to assert executive privilege or other official privilege which attends to the Office of President of the United States to prevent access to or use by the incumbent President or his designee within the Executive Branch of any of the "presidential materials"which are needed for the ongoing business of the government.

EIGHTH DEFENSE

72. The President of the United States or his designee within the Executive Branch has an overriding right under Article II of the Constitution of the United States to access to and use of those official materials of prior Administrations which the incumbent President determines are necessary and important to the ongoing business of the government.

NINTH DEFENSE

73. The September 7, 1974, letter agreement between plaintiff and defendant Administrator does not affect, limit or cede the overriding right of the incumbent Administration to access to and use of those official materials of the Nixon Administration which the incumbent President determines are necessary and important to ongoing business of the government.

TENTH DEFENSE

74. Access to and use of the official materials of the Nixon Administration by the incumbent Administration for ongoing business of the government will not impair any constitutional or other lawful rights or privileges of plaintiff Nixon.

ELEVENTH DEFENSE

75. The Agreement of November 9, 1974, between the Special Prosecutor and Arthur F. Sampson, Philip W. Buchen and H. Stuart Knight, which affords the Special Prosecutor access to and use of those "presidential materials" that are relevant and important to investigations and prosecutions within the jurisdiction of the Special Prosecutor, is valid and enforceable.

COUNTERCLAIM

76. Jurisdiction for this counterclaim is founded on 28 U.S.C. §1345, as hereinafter more fully appears.

77. Henry S. Ruth, Jr. was appointed Special Prosecutor on October 26, 1974, by the Attorney General .

78. Under regulations promulgated by the Attorney General, the Special Prosecutor is authorized, pursuant to 28 U.S.C. §515(a), to conduct any kind of legal proceeding, civil or criminal, which United States attorneys are authorized by law to conduct and to designate attorneys to conduct such legal proceedings. See 28 C.F.R. §0.38(a). United States attorneys are authorized by 28 U.S.C. §547(2) to prosecute or defend, for the Government, civil actions, suits or proceedings in which the United States is concerned.

79. Under regulations promulgated by the Attorney General, the Special Prosecutor has "full authority for investigating and prosecuting offenses against the United States arising out of the unauthorized entry into Democratic National Committee Headquarters at the Watergate, all offenses arising out of the 1972 Presidential Election for which the Special Prosecutor deems it necessary and appropriate to assume responsibility, allegations involving the President, members of the White

House staff, or Presidential appointees, and any other matters which he consents to have assigned to him by the Attorney General."

80. Upon information and belief, some of the "presidential materials" now in the possession, custody and control of the United States are relevant and important to current investigations and prosecutions within the jurisdiction of the Special Prosecutor.

81. On or about November 8, 1974, President Gerald R. Ford personally determined and informed his counsel that "the due administration of justice and the public interest require that the Special Prosecutor have prompt and effective use of those presidential materials of the Nixon Administration now located in the White House complex that are relevant and important to ongoing criminal investigations and prosecutions within the Special Prosecutor's jurisdiction."

82. Pursuant to this determination by the President, and based upon the constitutional right and power of the Executive described in paragraph 72 above, defendant Administrator, Messrs. Buchen and Knight, and the Special Prosecutor entered into an Agreement (the "Agreement") on November 9, 1974, to afford the Special Prosecutor access to and use of those "presidential materials" that are relevant and important to the Special Prosecutor's investigations and prosecutions. (A copy of the Agreement is attached hereto as Exhibit A.)

83. The "presidential materials" to which President Ford has given the Special Prosecutor limited access and use were the official records of the United States during plaintiff's tenure as President. The November 9, 1974 Agreement does not provide for the search of any materials that relate to purely personal matters of plaintiff. It covers only those materials that relate to the conduct of public matters.

84. The Agreement establishes procedures to minimize access to irrelevant materials by limiting searches to those files and recorded conversations that may contain items actually relevant to the Special Prosecutor's jurisdiction. Before being granted access, the Special Prosecutor must specify in writing "those materials that he has reason to believe are relevant to specified criminal investigations or prosecutions within the Special Prosecutor's jurisdiction and * * * why access to such materials is important to a full and fair resolution of those investigations and prosecutions."

85. The agreement provides that before any search for specified materials is conducted pursuant to the Agreement, plaintiff or his attorney or designated agent must be given notice of the search.

86. All of the "presidential materials" to which access and use is accorded the Special Prosecutor by the Agreement are in the possession, custody and control of the United States.

87. Paragraphs 67-68 and 70-74 are realleged and incorporated by reference herein. Implementation of the Agreement will not violate the Presidential Recordings and Materials Preservation Act, the September 7, 1974 letter agreement between plaintiff and defendant Administrator, or any constitutional or other lawful rights or privileges of plaintiff.

88. Implementation of the Agreement, which would provide the Special Prosecutor access to and use of those "presidential materials" relevant and important to investigations and prosecutions within his jurisdiction, is essential to the public interest.

89. Plaintiff Nixon, by his complaint, seeks injunctive relief that would bar implementation of the Agreement.

WHEREFORE Henry S. Ruth, Jr., Special Prosecutor, respectfully requests:

(1) that the complaint of plaintiff Richard M. Nixon be dismissed;

(2) that, in the alternative, any equitable relief granted plaintiff specifically allow implementation of the November 9, 1974 Agreement;

(3) that the November 9, 1974 Agreement be declared valid and enforceable; and

(4) such other and further relief as the Court deems appropriate.

Respectfully submitted,
/s/Henry S. Ruth, Jr.
HENRY S. RUTH, JR.
Special Prosecutor

/s/Peter M. Kreindler
PETER M. KREINDLER
Counsel to the Special Prosecutor

/s/Richard J. Davis
RICHARD J. DAVIS
Assistant Special Prosecutor

/s/Kenneth S. Geller
KENNETH G. GELLER
Assistant Special Prosecutor

Watergate Special Prosecution Force
1425 K Street, N.W.
Washington, D.C. 20005

Dated: January 9, 1975

NOVEMBER 9, 1974 AGREEMENT

WHEREAS, Gerald R. Ford, President of the United States has determined and informed his Counsel that the due administration of justice and the public interest require that the Special Prosecutor have prompt and effective use of those Presidential materials of the Nixon Administration now located in the White House complex that are relevant and important to ongoing criminal investigations and prosecutions within the Special Prosecutor's jurisdiction; and

WHEREAS, this Agreement, if implemented, would accommodate the needs of the Special Prosecutor with respect to such materials;

NOW, THEREFORE, the undersigned have agreed as follows:

1. Upon letters from the Special Prosecutor to Counsel to the President specifying those materials that he has reason to believe are relevant to specified criminal investigations or prosecutions within the Special Prosecutor's jurisdiction and explaining why access to such materials is important to a full and fair resolution of those investigations and prosecutions, the Special Prosecutor or his designees shall be afforded access to the materials under the following procedures:

a. *Documents*

1. Where files are organized by subject matter, only those files may be examined which, because of their titles, may contain documents relevant to these specified investigations and prosecutions.

2. Where files are organized chronologically, only that portion of the file covering the time period relevant to the request may be examined.

3. Where no chronological or subject label is on a file, the file may be examined to determine whether the file contains relevant materials.

4. In order to assist in these searches, the Special Prosecutor may request the assistance of members of the archival staff assigned to the White House in making a list of file titles or other index.

b. *Tape Recordings:* Only the tape recordings of conversations specified by letters according to the above procedures may be listened to.

2. The Special Prosecutor shall be allowed to make copies of only those tapes of conversations and documents that he determines are relevant to criminal investigations or prosecutions within his jurisdiction. Prior to the Special Prosecutor receiving such copies, Counsel to the President may review the copies to determine whether they may not be disclosed for reasons of national security. The originals of any tapes and documents, copies of which are provided to the Special Prosecutor, shall be retained and, if necessary for a criminal proceeding, will be given to the Special Prosecutor for such proceeding in exchange for the copies.

3. Richard M. Nixon or his attorney or designated agent shall be given notice of, and may be present during, searches pursuant to this Agreement. Also, Mr. Nixon or his attorney or designated agent, shall be afforded access to and/or copies of those tapes of conversation and documents for which the Special Prosecutor is allowed copies. The Counsel to the President also may designate individuals to be present during these searches.

4. No Presidential materials shall be removed to locations in Washington, D.C. other than the White House complex without the approval of the Special Prosecutor and no portions of such materials shall be removed to

locations outside of the District of Columbia without an indication from the Special Prosecutor that he has no further need for such portions, except upon court order.

5. The parties to this Agreement shall move jointly to modify, if necessary, the temporary restraining order as now outstanding in Civil Action number 74-1518 and in consolidated cases in the United States District Court for the District of Columbia to permit implementation of this Agreement.

/s/Philip W. Buchen Nov 8, 1974
Philip W. Buchen
Counsel to the President

/s/Arthur F. Sampson 11/9/74
Arthur F. Sampson
Administrator of General Services

/s/H. Stuart Knight 11/9/74
H. Stuart Knight
Director, United States Secret Service

/s/Henry S. Ruth, Jr. Nov. 8, 1974
Henry S. Ruth, Jr.
Special Prosecutor
Watergate Special Prosecution Force

[Caption Omitted in Printing]

ANSWER OF INTERVENOR-DEFENDANTS THE REPORTERS COMMITTEE FOR FREEDOM OF THE PRESS, AMERICAN HISTORICAL ASSOCIATION, AMERICAN POLITICAL SCIENCE ASSOCIATION, ET AL.

Intervenor-Defendants The Reporters Committee for Freedom of the Press, et al. (hereafter "Intervenor-Defendants") answer the Complaint of Plaintiff Richard M. Nixon (hereafter "Plaintiff") as set forth below.

PRELIMINARY STATEMENT

Intervenor-Defendants find it necessary to note, at the outset, that many of the allegations of fact set forth in the Complaint contain and are inextricably mixed with characterizations and legal assumptions to such an extent that single factual admissions or denials, of the sort normally possible in federal court pleading, are impossible. The following paragraphs of this Answer attempt to distinguish between factual allegations and characterizations to the extent feasible, and to admit to factual assertions that are not contested insofar as they can be separated from such characterizations.

FIRST DEFENSE

Intervenor-Defendants answer the numbered paragraphs of the Complaint as follows:

1. Intervenor-Defendants admit the allegations of Paragraph 1, except that they deny the allegations, characterizations and conclusions of law contained concerning the Act of Congress referred to therein and its effect on Mr. Nixon's rights.

2. Intervenor-Defendants admit that this Court has jurisdiction to hear this action under 28 U.S.C. § § 1331, 1332 and 1361, but deny that jurisdiction is properly based on 28 U.S.C. § § 1346, 3456 and 2282. Intervenor-Defendants admit that Defendant-Administrator is found in the District of Columbia and that the amount in controversy exceeds the sum or value of $10,000. Intervenor-Defendants further admit that many of the acts relating to the subject matter of this action occurred in the District of Columbia.

3-5. Intervenor-Defendants admit the allegations of Paragraph 3 through 5.

6. Although Intervenor-Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 6, it seems likely to Intervenor-Defendants that Plaintiff maintained some personal materials at the White House during his term as President. Intervenor-Defendants are without knowledge sufficient to form a belief as to the truth of the allegations (a) that some of these materials are still located in the White House complex, (b) that Mr. Nixon has made requests for such materials, or (c) that such materials have not been sent to Mr. Nixon.

7. Although Intervenor-Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 7, it seems likely to Intervenor-Defendants that Plaintiff maintained materials relating to political activities at the White House. Intervenor-Defendants are without knowledge sufficient to form a belief as to the truth of the allegations (a) that some of these materials are still located in the White House complex, (b) that Mr. Nixon has made requests for such materials or (c) that such materials have not been sent to Mr. Nixon.

8. Intervenor-Defendants admit the allegations in Paragraph 8, except as to the allegations concerning "personal and political materials" referred to therein, which have been answered in the preceding two paragraphs.

9. Intervenor-Defendants do not accept the definition of "presidential materials" of Richard Nixon alleged in Paragraph 9. Intervenor-Defendants have defined "presidential materials" to exclude the "purely personal materials" referred to in Paragraph 6 of the Complaint. Intervenor-Defendants deny the legal conclusions that the "presidential materials" generated and retained during the term of a President are the property of that President, and that Mr. Nixon is the owner of the "presidential materials" of his Administration. Intervenor-Defendants deny the characterizations and conclusions of law as to the ownership of the records of the Administrations of prior Presidents.

10. Intervenor-Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 10 concerning Plaintiff's "awareness," "knowledge" and "reliance." Intervenor-Defendants also lack knowledge or information sufficient to form a belief as to the truth of the allegation that Plaintiff caused to be created and retained a substantial amount of materials which he would not have created or retained had he concluded that they were not his personal property to be used as he deemed appropriate. Intervenor-Defendants deny the characterizations and conclusions of law relating to statutory interpretation and the actions and attitudes of Congress and former Presidents.

11. Intervenor-Defendants deny the characterizations and conclusions of law relating to the United States Constitution and Supreme Court opinions alleged in

Paragraph 11. Intervenor-Defendants admit that some of the presidential materials embody, constitute or reflect communications between Plaintiff and his aides relating to the conduct of the Office of the President.

12. Intervenor-Defendants lack specific knowledge or information sufficient to form a belief as to the truth of the allegation of Paragraph 12 concerning the nature of the communications described in the first sentence. Moreover, although they lack knowledge or information sufficient to form a belief as to the relative volume of materials which fit the description alleged in Paragraph 12, it seems likely that the relative number of such documents is "few" rather than "many" as alleged therein. Plaintiff's claim of privileges as to such material and his characterization of those privileges are conclusions of law which do not require an answer.

13. Intervenor-Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 13.

14. Intervenor-Defendants admit the allegation in Paragraph 14 that shipment of the "presidential materials" of the Nixon Administration to California was temporarily deferred, but Intervenor-Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations concerning the reason why the materials were not sent to Mr. Nixon's custody in California. Intervenor-Defendants specifically deny that none of the materials have been shipped to Plaintiff in California, and deny that the presidential materials are the property of the Plaintiff.

15. Intervenor-Defendants admit the allegation in Paragraph 15 that Mr. Buchen and other representatives of President Ford entered into discussions with a representative of Plaintiff concerning the presidential materials of the

Nixon Administration on or about September 3, 1974. Deny that the presidential materials are the property of Mr. Nixon to the extent that that is implied in paragraph 15. Intervenor-Defendants deny that the purpose of the negotiations was to assure the safety of the presidential materials or to assure the availability of such materials. Indeed, in the Agreement of September 6, 1974 between Plaintiff and the Administrator of General Services, Mr. Nixon was given the right to destroy the presidential materials, in their entirety, after a period of time.

16. Intervenor-Defendants lack knowledge or information sufficient to form a belief as to the allegation in Paragraph 16 concerning when Plaintiff learned or from whom Plaintiff learned that the Attorney General of the United States had been requested to give an opinion concerning the legal ownership of the presidential materials of the Nixon Administration. Intervenor-Defendants admit that the Attorney General rendered an opinion which concluded that title to the presidential materials was in former President Nixon. Intervenor-Defendants deny the characterization concerning the papers, documents and effects of every President of the United States.

17. Intervenor-Defendants admit the allegation in Paragraph 17 that Plaintiff and Defendant-Administrator of General Services entered into an agreement dated September 6, 1974. Intervenor-Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 17 concerning Plaintiff's reason for entering into the Agreement and that Plaintiff was induced to enter into the Agreement.

18. The allegation in Paragraph 18 as to the statutory authority to execute the depository agreement is a characterization and conclusion of law which Intervenor-

Defendants deny. Intervenor-Defendants further state that as to the terms of the Agreement, the Agreement speaks for itself.

19-23. With respect to Plaintiff's allegations concerning "Some of the Terms and Conditions of the Depository Agreement" in Paragraphs 19-23, Intervenor-Defendants state that the Agreement speaks for itself. These allegations do not require an answer. Intervenor-Defendants deny the characterizations in Paragraph 23 as to motives and as to the matters that Mr. Nixon "recognized." Intervenor-Defendants also deny the conclusions of law alleged in Paragraph 23.

24. Intervenor-Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 24 concerning meetings between the Watergate Special Prosecution Force and Philip Buchen or members of his staff. Intervenor-Defendants admit that some of the presidential materials were not transferred to California but deny the characterization as to the effect of this action and deny the characterizations and conclusions of law alleged in the last sentence of Paragraph 24.

25-27. Intervenor-Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraphs 25 through 27.

28. Intervenor-Defendants deny the allegations of Paragraph 28 to the extent that they allege that Mr. Nixon is the owner of the presidential materials of his Administration, but otherwise admit the allegations of Paragraph 28. Intervenor-Defendants further state that the lawsuits referred to in Paragraph 28 sought other relief as well as that alleged in Paragraph 28.

29. Intervenor-Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 29.

30. Intervenor-Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 30. Intervenor-Defendants specifically deny the conclusion of law that compliance with any subpoena that may have been issued will necessarily entail a breach of confidentiality of materials or violate any privileges and rights of Plaintiff.

31. Intervenor-Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegation of Paragraph 31 concerning the service by the Special Prosecutor of eight subpoenas and the requirements of those subpoenas. Intervenor-Defendants also lack knowledge or information sufficient to form a belief as to the truth of the allegation in the last sentence of Paragraph 31 concerning the withdrawal of subpoenas previously served. Intervenor-Defendants admit that on November 9, 1974, Defendant-Administrator, Philip Buchen and H. Stuart Knight entered into an Agreement with the Watergate Special Prosecutor. Intervenor-Defendants state that the Agreement speaks for itself and deny the characterizations and conclusions of law contained in Paragraph 31 with respect to that Agreement.

32. Intervenor-Defendants admit the allegations in Paragraph 32 that on November 11, 1974 Plaintiff requested the Court to enter a restraining order against implementation of the November 9, 1974 Agreement; that the Special Prosecutor requested an Order permitting implementation; and that to date no order permitting the implementation has been entered. Intervenor-Defendants further state that to date no order restraining or denying implementation has been entered. Intervenor-Defendants deny the characterization of the Agreement contained in Paragraph 32 as a "search and seizure agreement."

33. Intervenor-Defendants admit that the Senators named in Paragraph 33 introduced a bill (S. 4016) on September 18, 1974 and deny the characterization of the purpose of the bill. Intervenor-Defendants further deny the allegations that the depository agreement was "statutory-based" and that the bill "confiscate[s]" materials.

34. Intervenor-Defendants admit the membership of the two Senators on the Congressional Committees as alleged in Paragraph 34 and the issuance of a subpoena by that Committee. Intervenor-Defendants state that the ruling of the United States Court of Appeals for the District of Columbia Circuit cited in Paragraph 34 speaks for itself and does not require an answer.

35. Intervenor-Defendants admit that the Senate and the Committees thereof took the actions as alleged in Paragraph 35 but deny that the measure was "controversial and historic." Indeed, a bill which passed both Houses of Congress by voice vote in three weeks was clearly without substantial controversy.

36. Intervenor-Defendants admit that the House of Representatives and the Committees thereof took the actions as alleged in Paragraph 36. The characterization of the legislation described therein is a conclusion of law and does not require an answer.

37. Intervenor-Defendants admit the allegation in Paragraph 37.

38. Intervenor-Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegation of Paragraph 38.

39. Intervenor-Defendants admit the allegations of Paragraph 39.

40-50. Intervenor-Defendants state with respect to the allegations in Paragraphs 40 through 50 under the

heading "Various Provisions of the Statute," that the characterizations of the statutory provisions therein are conclusions of law for which answers are not required. The statute speaks for itself.

51-61. The allegations in Paragraphs 51 through 61 under the heading "Reasons for Invalidity of the Act" are conclusions of law which do not require answer. Nevertheless, Intervenor-Defendants state that they deny that Public Law No. 93-526 is unconstitutional, unlawful or void for any of the reasons listed in Paragraphs 51-61, or for any other reasons.

62. Intervenor-Defendants deny the allegations in Paragraph 62.

63. Intervenor-Defendants deny the allegations in Paragraph 63 except that they lack knowledge or information sufficient to form a belief as to the truth of the allegation in the last sentence of paragraph 63 concerning likelihood of injury to Defendant-Administrator,

64. Intervenor-Defendants deny the allegations in Paragraph 64.

SECOND DEFENSE

The Complaint fails to state a claim upon which relief can be granted.

THIRD DEFENSE

The Complaint should be dismissed becuase it is redundant of a case already pending before this Court, and in particular, because certain of the the relief sought by Plaintiff is already under consideration in another action pending before this Court that has been fully briefed and argued.

FOURTH DEFENSE

Certain of Plaintiff's claims for relief are not yet ripe for determination because their validity depends on the nature of the regulations the General Services Administration must promulgate under the Act. Those regulations have not yet been promulgated.

FIFTH DEFENSE

Plaintiff, as a former President, has no right to assert any presidential or executive privilege to bar access to the presidential materials.

SIXTH DEFENSE

Materials which reflect or relate to the acts, decisions or policies of the United States Government or the President of the United States and were prepared by and/or received by the President and/or the Executive Office of the President, or by presidential assistansts, staff members or agencies were and are the property of the United States Government and are not the property of Plaintiff Nixon.

Respectfully submitted,

/s/Robert E. Herzstein
Robert E. Herzstein

/s/Andrew S. Krulwich
Andrew S. Krulwich

/s/Mark J. Spooner
Mark J. Spooner

January 9, 1975

ARNOLD & PORTER
1229 Nineteenth Street, N. W.
Washington, D. C. 20036
(202) 872-6700

Counsel for Intervenor-Defendants
The Reporters Committee for Freedom of the Press,
American Historical Association,
American Political Science Association, *et al.*

[Caption Omitted in Printing]

ANSWER OF INTERVENOR-DEFENDANTS, LILLIAN HELLMAN, ET AL.

Intervenor-Defendants LILLIAN HELLMAN, *et al.* (hereafter "Intervenor-Defendants") answer the Complaint of Plaintiff Richard M. Nixon (hereafter "Plaintiff") as set forth below.

FIRST DEFENSE

Intervenor-Defendants answer the numbered paragraphs of the Complaint as follows:

1. Intervenor-Defendants admit the allegations of Paragraph 1, except that they deny the allegations, characterizations and conclusions of law contained concerning the Act of Congress referred to therein and its effect on Mr. Nixon's rights.

2. Intervenor-Defendants admit that this Court has jurisdiction to hear this action under 28 U.S.C. §§1331, 1332 and 1361, but deny that jurisdiction is properly based on 28 U.S.C. §§1346, 3456 and 2282. Intervenor-

Defendants admit that Defendant-Administrator is found in the District of Columbia and that the amount in controversy exceeds the sum or value of $10,000. Intervenor-Defendants further admit that many of the acts relating to the subject matter of this action occurred in the District of Columbia.

3-5. Intervenor-Defendants admit the allegations of Paragraph 3 through 5.

6. Intervenor-Defendants lack knowledge sufficient to form a belief as to the allegations of Paragraph 6.

7. Intervenor-Defendants lack knowledge sufficient to form a belief as to the allegations of Paragraph 7.

8. Intervenor-Defendants admit the allegations of Paragraph 8.

9. Intervenor-Defendants deny the allegations of Paragraph 9.

10. Intervenor-Defendants lack knowledge sufficient to form a belief as to the allegations of Paragraph 10.

11. Intervenor-Defendants deny the characterizations and conclusions of law relating to the United States Constitution and the Supreme Court opinions alleged in Paragraph 11. Intervenor-Defendants admit that some of the presidential materials embody, constitute or reflect communications between Plaintiff and his aides relating to the conduct of the Office of the President.

12. Intervenor-Defendants lack knowledge sufficient to form a belief as to the allegations of Paragraph 12.

13. Intervenor-Defendants lack knowledge sufficient to form a belief as to the allegations of Paragraph 13.

14. Intervenor-Defendants admit the allegation in Paragraph 14 that shipment of the "presidential materials" of the Nixon Administration to California was

temporarily deferred, but Intervenor-Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations concerning the reason why the materials were not sent to Mr. Nixon's custody in California. Intervenor-Defendants specifically deny that none of the materials have been shipped to Plaintiff in California, and deny that the presidential materials are the property of Plaintiff.

15. Intervenor-Defendants admit the allegation in Paragraph 15 that Mr. Buchen and other representatives of President Ford entered into discussions with a representative of Plaintiff concerning the presidential materials of the Nixon Administration on or about September 3, 1974. Deny that the presidential materials are the property of Mr. Nixon to the extent that that is implied in Paragraph 15. Intervenor-Defendants deny that the purpose of the negotiations was to assure the safety of the presidential materials or to assure the availability of such materials.

16. Intervenor-Defendants lack knowledge or information sufficient to form a belief as to the allegation in Paragraph 16 concerning when Plaintiff learned or from whom Plaintiff learned that the Attorney General of the United States had been requested to give an opinion concerning the legal ownership of the presidential materials of the Nixon Administration. Intervenor-Defendants admit that the Attorney General rendered an opinion which concluded that title to the presidential materials was in former President Nixon. Intervenor-Defendants deny the characterization concerning the papers, documents and effects of every President of the United States.

17. Intervenor-Defendants admit the allegation in Paragraph 17 that Plaintiff and Defendant-Administrator of General Services entered into an agreement dated

September 6, 1974 and lacks knowledge and information as to the other allegations.

18. The allegation in Paragraph 18 as to the statutory authority to execute the depository agreement is a characterization and conclusion of law which Intervenor-Defendants deny. Intervenor-Defendants further state that as to the terms of the Agreement, the Agreement speaks for itself.

19-23. With respect to Plaintiff's allegations concerning "Some of the Terms and Conditions of the Depository Agreement" in Paragraphs 19-23, Intervenor-Defendants state that the Agreement speaks for itself.

24. Intervenor-Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 24 concerning meetings between the Watergate Special Prosecution Force and Philip Buchen or members of his staff. Intervenor-Defendants admit that some of the presidential materials were not transferred to California but deny the characterization as to the effect of this action and deny the characterizations and conclusions of law alleged in the last sentence of Paragraph 24.

25-27. Intervenor-Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraphs 25-27.

28. Intervenor-Defendants deny the allegations of Paragraph 28 to the extent that they allege that Mr. Nixon is the owner of the presidential materials of his Administration, but otherwise admit the allegations of Paragraph 28. Intervenor-Defendants further state that the lawsuits referred to in Paragraph 28 sought other relief as well as that alleged in Paragraph 28.

29. Intervenor-Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 29.

30. Intervenor-Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 30. Intervenor-Defendants specifically deny the conclusion of law that compliance with any subpoena that may have been issued will necessarily entail a breach of confidentiality of materials or violate any privileges and rights of Plaintiff.

31. Intervenor-Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegation of Paragraph 31 concerning the service by the Special Prosecutor of eight subpoenas and the requirements of those subpoenas. Intervenor-Defendants also lack knowledge or information sufficient to form a belief as to the truth of the allegation in the last sentence of Paragraph 31 concerning the withdrawal of subpoenas previously served. Intervenor-Defendants admit that on November 9, 1974, Defendant-Administrator, Philip Buchen and H. Stuart Knight entered into an Agreement with the Watergate Special Prosecutor. Intervenor-Defendants state that the Agreement speaks for itself and deny the characterizations and conclusions of law contained in Paragraph 31 with respect to that Agreement.

32. Intervenor-Defendants admit the allegations in Paragraph 32 that on November 11, 1974 Plaintiff requested the Court to enter a restraining order against implementation of the November 9, 1974 Agreement; that the Special Prosecutor requested an Order permitting implementation; and that to date no order permitting the implementation has been entered. Intervenor-Defendants further state that to date no order restraining or denying implementation has been entered. Intervenor-Defendants deny the characterization of the Agreement contained in Paragraph 32 as a "search and seizure agreement."

33. Intervenor-Defendants admit that the Senators named in Paragraph 33 introduced a bill (S. 4016) on September 18, 1974 and deny the characterization of the purpose of the bill. Intervenor-Defendants further deny the allegations that the depository agreement was "statutory-based" and that the bill "confiscate[s]" materials.

34. Intervenor-Defendants admit the membership of the two Senators on the Congressional Committees as alleged in Paragraph 34 and the issuance of a subpoena by that Committee. Intervenor-Defendants state that the ruling of the United States Court of Appeals for the District of Columbia Circuit cited in Paragraph 34 speaks for itself and does not require an answer.

35. Intervenor-Defendants admit that the Senate and the Committees thereof took the actions as alleged in Paragraph 35 but deny that the measure was "controversial and historic." Indeed, a bill which passed both Houses of Congress by voice vote in three weeks was clearly without substantial controversy.

36. Intervenor-Defendants admit that the House of Representatives and the Committees thereof took the actions as alleged in Paragraph 36. The characterization of the legislation described therein is a conclusion of law and does not require an answer.

37. Intervenor-Defendants admit the allegation in Paragraph 37.

38. Intervenor-Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegation of Paragraph 38.

39. Intervenor-Defendants admit the allegations of Paragraph 39.

40-50. Intervenor-Defendants state with respect to the allegations in Paragraphs 40 through 50 under the heading "Various Provisions of the Statute," that the characterizations of the statutory provisions therein are conclusions of law for which answers are not required. The statute speaks for itself.

51-61. The allegations in Paragraphs 51 through 61 under the heading "Reasons for Invalidity of the Act" are conclusions of law which do not require answer. Nevertheless, Intervenor-Defendants state that they deny that Public Law No. 93-526 is unconstitutional, unlawful or void for any of the reasons listed in Paragraphs 51-61, or for any other reasons.

62. Intervenor-Defendants deny the allegations in Paragraph 62.

63. Intervenor-Defendants deny the allegations in Paragraph 63 except that they lack knowledge or information sufficient to form a belief as to the truth of the allegation in the last sentence of paragraph 63 concerning likelihood of injury to Defendant-Administrator.

64. Intervenor-Defendants deny the allegations in Paragraph 64.

SECOND DEFENSE

The Complaint fails to state a claim upon which relief can be granted.

THIRD DEFENSE

The Complaint should be dismissed because it is redundant of a case already pending before this Court, and in particular, because certain of the relief sought by Plaintiff is already under consideration in another action

pending before this Court that has been fully briefed and argued.

FOURTH DEFENSE

Certain of Plaintiff's claims for relief are not yet ripe for determination because their validity depends on the nature of the regulations the General Services Administration must promulgate under the Act. Those regulations have not yet been promulgated.

FIFTH DEFENSE

Plaintiff, as a former President, has no right to assert any presidential or executive privilege to bar access to the presidential materials.

SIXTH DEFENSE

Materials which reflect or relate to the acts, decisions or policies of the United States Government or the President of the United States and were prepared by and/or received by the President and/or the Executive Office of the President, or by presidential assistants, staff members or agencies were and are the property of the United States Government and are not the property of Plaintiff Nixon.

Respectfully submitted,

/s/Melvin L. Wulf
MELVIN L. WULF
c/o American Civil Liberties Union
410 First Street, S.E.
Washington, D.C. 20003
(202) 544-1681

/s/John H. F. Shattuck
JOHN H. F. SHATTUCK
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New York, New York 10027

[Caption Omitted in Printing]

MEMORANDUM OF THE SPECIAL PROSECUTOR IN RESPONSE TO THE COURT'S ORDER

The Special Prosecutor submits this memorandum in response to the Court's order of May 1, 1975, seeking each party's views on procedural issues relating to the hearing on the merits and disposition of this case. As explained below, because certain recent developments may meet the Special Prosecutor's interest in this lawsuit, the Special Prosecutor may seek to withdraw from the

proceedings prior to the final disposition of this case. Under these circumstances, we therefore believe it is appropriate to defer at this time to the views of the other parties on procedural issues, and we will accommodate ourselves to whatever procedures this Court adopts should it become necessary for the Special Prosecutor to continue active participation in the litigation.

The interest of the Special Prosecutor in the materials of the Nixon Administration is a well-defined one—to obtain use of the tapes and documents relevant and important to ongoing criminal investigations and prosecutions within the jurisdiction of the Special Prosecutor. The Special Prosecutor's need for these materials was recognized by President Ford, who authorized his Counsel to enter into an agreement providing the Special Prosecutor access to and use of the materials under carefully delineated procedures. The provisions of this agreement—referred to in these proceedings as the November 9th Agreement—are embodied in the regulations issued by the Administrator under Section 102(d) of the Presidential Recordings and Materials Preservation Act which, in general terms, authorizes access to these materials by executive branch agencies or departments for lawful government use. See 41 C.F.R. §105-63.302-1, 40 Fed. Reg. 2671 (January 14, 1975).

Former President Nixon, in the instant litigation, seeks injunctive relief not only against the Act, but also against implementation of the November 9th Agreement. To protect his ability to obtain necessary tapes and documents from the Nixon Administration materials, under both the statute and the November 9th Agreement, the Special Prosecutor sought to intervene in these proceedings. In doing so, he was prepared to argue, as he did earlier in *Nixon v. Sampson,* D.D.C. Civ. No. 74-1518, that whether or not Mr. Nixon has rights in these materials sufficient to prevent

access to them by private citizens, he has no right to prevent their lawful use by government agencies, especially in the face of a finding by the incumbent President that their use was necessary to the public interest. The Special Prosecutor, in seeking intervention, also was prepared to argue that the statute itself is a constitutional exercise of power by Congress.

From the outset, however, the Special Prosecutor has stressed in the various proceedings relating to these materials that his need was for *prompt* use of them. Because implementation of the November 9th Agreement was barred by an existing court order in *Nixon v. Sampson, supra,* the Special Prosecutor entered into discussions with counsel for Mr. Nixon in order to find ways consistent with that order to satisfy the needs of this Office. As a result of those discussions, the Special Prosecutor and counsel for Mr. Nixon agreed upon procedures whereby, with the consent of both Mr. Nixon as well as the incumbent Administration, the Special Prosecutor would recieve the tapes and documents he has reason to believe are relevant and important to investigations and trials still being conducted by his Office. As of this date a substantial number of the relevant files have been reviewed, and the Special Prosecutor's Office has received a great many pertinent documents. Additionally, we have received or listened to a number of tapes of recorded conversations. Under these existing procedures, we expect that within the relatively near future we will have received substantially all the materials for which we have indicated a need.

Given this development, it is likely that the interest which led the Special Prosecutor to intervene in this litigation will become mooted. Once we receive use of the necessary materials of the Nixon Administration, there will be no reason for us to seek future implementation of

the November 9th Agreement. Accordingly, we believe that fairness to the Court and the other parties requires us to defer to the views of these other parties on the issues raised by the Court. If the situation should change, and it remains necessary for us to continue active participation in the litigation, we will accommodate ourselves to whatever schedule or procedures are approved by the Court.[1] Until we receive substantially all of the materials we are now seeking, however, we cannot withdraw from the litigation at this time.

Respectfully submitted,

HENRY S. RUTH, JR.
Special Prosecutor

PETER M. KREINDLER
Counsel to the Special Prosecutor

RICHARD J. DAVIS
Assistant Special Prosecutor

KENNETH S. GELLER
Assistant Special Prosecutor

Attorneys for the United States

Watergate Special Prosecution Force
1425 K Street, N. W.
Washington, D. C. 20005

[1]The only issue upon which we might have to offer evidence involves the past practice of incumbent administrations in using materials of past administrations for continuing government business.

[Caption Omitted in Printing]

PLAINTIFF NIXON'S EVIDENTIARY SUBMISSION

In accordance with the pre-trial order entered by this Court on June 13, 1975, Plaintiff, by his counsel, herewith submits, in connection with his evidentiary presentation, a request for admissions together with 1) four affidavits, 2) a description of the White House taping system, 3) four documentary items, and 4) a summary of the testimony given by John Nesbitt in the consolidated cases pertaining to issues pending before this Court.

The four affidavits submitted at this time include that of the Plaintiff, John S. D. Eisenhower, William J. Hopkins, and Raymond G. Larroca. In the request for admissions, Plaintiff asks that the Defendants admit that if the four affiants were called to testify in this proceeding their testimony on direct examination would be as set forth in the affidavits.

In addition to the affidavits submitted herewith, Plaintiff, on June 20, 1975, provided counsel for the government-defendants four proposed affidavits prepared following interviews with government personnel. A fifth affidavit was provided on June 27, 1975. Although counsel for Plaintiff understood that these affidavits would be approved, or revised, and returned to Plaintiff for submission to the Court by this date, counsel for the government have indicated that they did not so understand. Consequently, at such time as they are completed, Plaintiff will submit the affidavits of Mr. John C. Broderick, Mr. Richard Jacobs, Mr. Frank Matthews, Mr. Thomas P. Wolf, and Mrs. Gertrude Fry.

Plaintiff intends to submit one additional affidavit that is not available at this time. Mr. John R. Hubbard, President of the University of Southern California, is

presently traveling in Saudi Arabia and Plaintiff's counsel have not been able to discuss with him the proposed affidavit describing, on behalf of the University, the plans for creation of a Presidential Library in Los Angeles to house, for purposes of research and analysis, the materials of the Nixon Administration. Mr. Hubbard is expected to return sometime next month, and counsel will discuss with him his affidavit at that time. We hope to be able to submit this affidavit by the end of July.

Finally, on June 11, 1975, Plaintiff sent letters to each of the existing Presidential Libraries, with copies to all counsel, posing various questions concerning the nature of certain of the materials deposited in the Presidential Libraries and the operation of those libraries as it relates to issues pending in this litigation. To this date we have not received a reply to any of the inquiries. However, we are informed by counsel for the government-defendants that replies will be forthcoming. At that time we may seek to supplement this evidentiary presentation.

Respectfully submitted,

/s/Herbert J. Miller, Jr.
Herbert J. Miller, Jr.

/s/Raymond G. Larroca
Raymond G. Larroca

/s/William H. Jeffress, Jr.
William H. Jeffress, Jr.

/s/R. Stan Mortenson
R. Stan Mortenson

MILLER, CASSIDY,
LARROCA & LEWIN
2555 M Street, N.W., Suite 500
Washington, D.C. 20037
(202) 293-6400

Dated: June 30, 1975

[Caption Omitted in Printing]

AFFIDAVIT OF RICHARD NIXON

County of San Diego
State of California ss:

Richard Nixon, being duly sworn under oath, deposes and says as follows:

1. I am a citizen of the United States and a resident of the State of California, my residence being at San Clemente, California.

2. From January 3, 1947 to November 30, 1950 I served as a Member of the House of Representatives. From December 1, 1950 to January 1, 1953 I served as a United States Senator from the State of California. Thereafter, from January 20, 1953 until January 19, 1961 I served as Vice President of the United States. I was elected President of the United States and served in that office from January 20, 1969 until my resignation on August 9, 1974.

3. During the time I served in each of these four Constitutional offices as it was my practice to retain and preserve nearly all of the materials produced or received by myself or my staff. Following the practice of all other Congressmen, Senators and Vice Presidents, when I left those offices I took with me all the materials and memorabilia my staff and I had accumulated. When I resigned the office of President, however, I left in the White House not only the materials my staff and I had accumulated during five and one half years there, but a large quantity of the materials that I had brought with me at the time I assumed office. I had no intention of leaving any of these materials in the White House permanently, and left instructions with members of my staff to arrange for their immediate shipment to me in

California. To this date I have not received any of the presidential materials I left in the White House on August 9, 1974. I have since received some of the pre-presidential materials that were impounded in Washington for more than six months. Although it is difficult to recall specific items without having access to the materials presently retained in Washington under court order, I know that many items dating from the pre-presidential period prior to January 20, 1969, are still impounded with the presidential materials of my Administration. For example, I know that copies of my personal medical records and my appointment calendars for years preceding 1969 are still being held there.

4. It is difficult to describe the nature of the materials that were generated or retained by me and members of my staff while I was President because of their almost limitless variety. A significant portion consists of correspondence between myself and others and correspondence between members of my staff and others. Another large portion of the presidential materials consists of memoranda sent to me, or sent by me to members of my staff, or circulated among members of my staff. In addition to correspondence and memoranda, these materials include, among other things, various reports, briefing books, photographs and audiovisual materials, speech drafts, pamphlets, recordings and diaries.

5. Even more extensive than the variety of presidential materials is the variety of the subject matter reflected in them. This stems from the fact that the President serves not only as the nation's Chief Executive but is a major force in foreign affairs, a formulator of domestic policy, a leader of his political party, a politician in his own behalf, a private citizen with personal friends and associates, and a husband and father to his family. To the

extent he and his staff generate or receive materials relating to any or all of these areas, they are included among his presidential materials. In my case, the presidential materials reflect all of the above, and frequently in such ways that to attempt to disassociate one from the other would be impossible.

6. The presidential materials of my Administration include thousands of items which were prepared or otherwise accumulated in connection with the performance of my constitutional obligations. For example, as President I was required under the Constitution to report to Congress from time to time concerning the state of the union. Each of my State of the Union messages are a matter of public record preserved in official public documents. The preliminary drafts and supporting materials gathered in connection with the preparation of those drafts are not matters of public record, however, because they were prepared exclusively for my use. I prepared many of them personally, often working alone into the early hours of the morning writing and rewriting in long hand form the final text for each of my State of the Union addresses. These drafts reflect my personal thoughts and the procedure I followed in preparing a comprehensive look at the State of the Union. The drafts and supporting materials for my State of the Union addresses as well as all my other addresses are now included among my presidential papers.

7. Another example of the presidential materials that were generated in connection with my performance of constitutional duties are those having to do with the signing or vetoing of bills passed by the Congress. When the Congress enacted legislation I would receive from my aides in the White House, from other officials of the government, and sometimes from private citizens or

organizations, their recommendations concerning what action I should take. I always desired that such recommendations—whether in the form of oral reports, memoranda, or correspondence—represent the individual's or author's candid and forthright opinion concerning the advisability of my signing into law the particular legislation in question. If I decided to veto the legislation, then I, or members of my staff, would prepare veto messages to Congress. Such messages were usually prepared in draft for my review. Sometimes I would reject the draft; other times I would personally revise it. In any event, only the veto message sent to Congress became a matter of public record. The working drafts and all of the materials reflecting the advice I had received were retained for inclusion among my presidential papers.

8. Not all of the advice and recommendations I received as President with regard to the performance of my constitutional obligations came to me in the form of documents. It was my practice to discuss with my aides, other officials of government, members of Congress, representatives of different organizations, and private citizens, their opinions on such matters as the preparation of legislation, the signing or vetoing of enrolled bills, and even the commencement, continuation or termination of military action. Most often such discussions took place in the Oval Office of the White House or in my office in the Executive Office Building. I found that such discussions were frequently more candid and consequently more valuable to me in my decision-making than those which came to me in other forms. I also found that such discussions permitted me to explore a complete range of thoughts, opinions and options. For example, I would be able to elicit from my aides, Cabinet members, Congressmen and Senators, and others their feelings concerning not only the wisdom of a particular course of action, but

their blunt assessments of possible ramifications upon foreign or domestic policy, as well as potential political effects. I assumed that such opinions were given in confidence to assist me as President, and that they would not be publicly disclosed. Just as important, those who gave me their opinions must have so assumed. Otherwise, their advice would have been less candid and less valuable, particularly if they thought that their advice would be rejected and they would be held accountable publicly for what later might appear to be erroneous or even stupid.

9. As I have indicated, not all of a President's materials deal with his activities as Chief Executive. Many reflect the fact that the President also serves as the head of his political party. In this regard I and members of my staff would often correspond with federal, state and local political officeholders and local political party officials. Such correspondence usually dealt in major part with partisan political matters. I also received memoranda concerning purely political matters from members of my staff and other government officials. For example, during my term as President I was requested on innumerable occasions to address political gatherings. Prior to such appearances members of my staff prepared for my personal use a "briefing book". These note books contained exclusively political material. They listed, for example, all of the local political officials who would be in attendance and would describe their biographical background, their positions on various issues, and often personal vignettes that would be helpful to me in meeting and talking with them. The briefing books also described the issues that would be of concern to the organization or people requesting the appearance. If the appearance was on behalf of a local politician, the briefing book would describe the strengths and weaknesses of both the

candidate and his opponent and where they both stood on matters of local and national concern. The briefing books also set forth suggestions for my remarks. I would frequently edit these drafts, noting additional points I wanted to make, and generally recording my thoughts as they pertained to the appearance. It is my recollection that there were hundreds of such briefing books prepared for my use. Similar books were prepared on legislative strategy, press conference briefings and literally hundreds of meetings I had in Washington and elsewhere with business, labor, education, religious and other groups concerning the whole fabric of American society. These books were retained and are among my presidential materials.

10. As was the case with matters dealing with my duties as a constitutional officeholder, it was also my practice in my role as head of my political party to engage in extensive and frequent discussions with members of my staff, members of Congress, other officials of government, governors and state officials and personal friends and associates concerning a multitude of political matters. Many of those discussions were held in the Oval Office or my office in the Executive Office Building. Such discussions included, for example, whether I should support certain candidates for elected office and, if so, what form that support should take. In these discussions purely personal matters were often inextricably intermixed with political matters, and it would be virtually impossible to separate the various combinations of views and opinions expressed in them.

11. While President I also received a great deal of correspondence from private citizens ranging in topics from the prosecution of Lieutenant William Calley to the need for national health care. Sometimes the correspondence was from someone such as former Secretary of

Agriculture Ezra Taft Benson offering his opinions on our relations with the Soviet Union. At times, I would receive the suggestions of the economist and business consultant Pierre Rinfret concerning economic problems and forecasts. In sum, literally hundreds of letters arrived at the White House each day from persons who wished to express their thoughts on an infinite variety of topics. Some letters offered congratulations to my wife and me on our anniversary or our birthdays. Other times parents wrote concerning their hopes for the lives of their children as they grew up in a troubled time in this country's history. Thousands of school children also sent me their own personal messages every year. I could not read all of this correspondence each day, but I naturally read the more important letters and I consistently read samples of the rest. All of it is among my presidential materials.

12. As I have previously stated, my presidential materials also reflect the fact that while in office I continued to function as a private citizen, husband and father. As a private citizen I engaged in correspondence with friends, associates and other individuals. This correspondence did not necessarily pertain to my activities as a constitutional officeholder or even to political matters. For example, I can recall correspondence between myself and law school friends concerning our class reunion. I can also recall some personal letters I wrote to families of young men killed in action in Vietnam. These letters, of course, were of little import to the nation or to anyone except myself and the recipient. Often, such personal letters were written in my own hand. Although I believe it would be an invasion of my privacy and that of others to be required to reveal the identity of persons with whom I corresponded, I believe it is important to provide an example of the type of

personal correspondence that exists among my presidential papers. On one occasion I recall writing Mr. E. Guy Warren concerning an unpopular but important stand he had taken on a controversial subject. On another occasion I corresponded with members of my law practice concerning the circumstances under which my membership in the firm should be terminated. Other personal letters were sent to such persons as Mrs. Earl Warren, General J. D. Hughes, Elmer Bobst, Mrs. Lyndon Johnson, Patrick J. Buchanan, William Rogers, Mrs. Alice Roosevelt Longworth, Mrs. Bernard Brennan, Leonard Garment, and then Congressman Gerald R. Ford.

13. The personal documents included among my presidential materials go beyond personal correspondence. Because of the long hours that I was required to spend away from my family while President and even before that as Vice President, Senator and Congressman, my daughters adopted the practice of leaving personal notes at my office or in my residence so that at the end of the day, if they were not around, I would have at least a moment or two to learn what they had been doing or what their feelings or reactions were to my own activities. I valued, and still do, all of these very private and highly personal thoughts and deliberately preserved them among my presidential materials.

14. My habit of preserving personal notes and communications applied also to certain of my closest friends and associates. I can recall that sometimes during a Cabinet meeting I would be sent a note by someone present suggesting that I emphasize a particular point or congratulating me on a statement I had just made. Such notes too found their way into my presidential materials.

15. My presidential materials also include many personal mementos. For example, my wife and I, as

earlier first families had done, maintained a guest book which we requested our visitors in the White House to sign so that we could have a memory of our years in that great house. I also retained among my presidential materials mementos given me by the various brigades at the Naval Academy when I delivered the commencement address in 1974, and commemorative items from my two inaugurations. It is difficult for me to remember all of the mementos my wife and I preserved among my presidential materials, but I do know that like all mementos they were quite personal and not things I would show or discuss with persons other than my family and close friends.

16. The conversations I had in the Oval Office and in the Executive Office Building frequently included discussions of purely personal matters. It is impossible for me to catalog the myriad topics of such private discussions. I can only state that I had such conversations nearly daily and often several times during the course of a day with my wife, my daughters, personal friends, close staff members, and other persons. On occasion, for example, I would meet with a member of Congress who I counted also as a close personal friend. During such a meeting we might discuss matters pending before Congress, political matters of interest to us both, or personal matters having to do with our families, our respective interests in business, or any other thing that was on our minds. Such conversations were rarely, if ever, structured in such a way that the subjects could be separated in a logical or a compartmentalized fashion.

17. In my capacity as a private citizen I also, on occasion, had discussions in my offices with my personal physician concerning my health, a subject which I would not and did not discuss with others. I talked candidly with my personal attorneys about confidential matters.

And finally, on other occasions, I met and talked with clergymen and counsellors whom I considered to be personal clergy about matters I trusted and assumed they would not recount to others.

18. Also included among my presidential materials are copies of portions of my own personal diary. During various periods during my years as President I recorded dictabelts at the end of the day on which I expressed my reflections, thoughts, ideas and concerns with regard to the activities and events of that day. I considered this dictation exceedingly private and would therefore express many thoughts and opinions which I would not have conveyed to any but my closest friends and some to none other than my personal secretary. At times I expressed my frustrations, my feelings of exhilaration, or other emotions experienced throughout the day. I intended to preserve these diary dictabelts for later use in preparing my memoirs and I consider them extremely important for refreshing my memory as to my thoughts and feelings as they occurred. Some transcriptions of these dictabelts and some of the dictabelts themselves are among my presidential materials. To my knowledge the diary dictabelts are not labeled and only by listening to them would it be possible to determine what they are or what period they cover.

19. I have learned that also included among my presidential materials retained in the White House are my wife's personal files which were generated both before and during my tenure in office. Her files, too, are quite varied in nature and reflect a myriad of activities. One example is her record pertaining to the White House restoration project which was funded entirely by private contributions and which she voluntarily initiated and supervised. Many of my wife's personal letters and correspondence are also among my presidential materials.

20. Having served in constitutional offices of this country for a period exceeding twenty-five years, five and a half in the office of President, it is my opinion that the confidentiality of a constitutional officeholder's communications with the members of his staff, and between him and other individuals, must be preserved in order to assure the type of free-wheeling, candid, and often blunt or critical advice that is so vital to the performance of his office. The number of examples I could give to demonstrate the basis for my opinion would be virtually endless. I can state from my own experience that a President must be in a position to talk freely with his advisors or, for that matter, with members of Congress in order properly to carry out his activities in office. I can recall an instance in w ch the ranking minority member of a House Committee informed me about a personal problem involving the Committee's Chairman. It was important that I be aware of this in order to be in a position to determine what course of action to take on particular legislation. I do not believe the ranking minority member would have felt free to discuss this delicate situation if he had believed that his communication would later be made public. The same kind of frankness and even bluntness was also necessary when members of my Cabinet competed among themselves to obtain from me a particular decision with respect to a program or action of interest to them. Frankness was also important when my advisors discussed options for initiatives in foreign affairs and domestic policy. Suggestions would be presented, discussed, altered, dropped, reconsidered and, sometimes, implemented. But it was always essential to be assured that such discussions would not subsequently become public. If the President and his advisors had thought that their discussions were to be published and publicized, they would undoubtedly have

been far more cautious and far less frank and free-wheeling. These discussions, if made public even now, would not necessarily jeopardize the national security or be embarrassing to the participants, but they would surely chill the willingness of persons in similar positions now and in the future to engage in such candid and robust discussions for fear that their thoughts too may be made public by congressional act. Revelation of confidential discussions that occurred during my term in office, even though not necessarily embarrassing to the participants, might nevertheless have a direct impact on their ability to adopt similar or, for that matter, different positions in the future. This chilling effect may be felt by those presently holding public office who have expressed to me privately their thoughts, impressions and philosophies. Or it may impact upon persons such as Governors and state legislators who talked freely in my office and who in the years to come may desire to run for other elected positions. Beyond these few examples, the potential ramifications could be enormous for the lives of literally hundreds of persons whose futures depend upon their ability to express themselves freely and unimpeded by public disclosure of their discussions with me—discussions held with the expectation that they would remain confidential. I could not have instituted dramatic changes in foreign policy had I received advice that was anything but unvarnished. The opening to China, our new relationship with Russia, and new initiatives to dampen the powder keg in the Middle East are but a few of the available examples. The necessity of st aight-from-the-shoulder advice is not limited to national security matters but also to such crucial domestic issues as were involved in my decisions on desegregation of schools in the south, the cleaning up of the environment, revenue sharing and reforming our welfare structure. Such highly

controversial actions required advice covering all spectrums. To make the right decisions, it is absolutely indispensable for the President to have all possible options—even though some of those options in retrospect would appear wrong. Those who give advice must be able to do so with the total confidence that they will not be held unfairly accountable if the advice proves faulty or not accepted. All those who are sought out for counsel by the President deserve a complete hearing with the knowledge that the counsel they give is not merely what the President wants to hear but what they believe he should hear. I can only suggest that to legislate the required disclosure of such conversations was to act preciptiously and without thought of the enormity of the ramifications that would arise.

21. While I was in office and at the time the tape recordings of conversations in the Oval Office and my office in the Executive Office Building and elsewhere were made and my other presidential materials were generated, neither I nor the members of my staff expected that any of my presidential materials, and certainly not the tape recordings of my confidential conversations, would ever be disclosed to the public, at least without my express authorization. This expectation of confidentiality stemmed from the fact that every previous President had taken with him at the time he left office all of his presidential materials and had disposed of those materials in whatever way he deemed appropriate. I was also aware that in those instances in which the President died while in office, members of his family exercised ownership rights with respect to his materials and preserved their privacy and confidentiality.

22. I was also aware at the time I served as President that many Presidents before me had utilized their

presidential materials after they left office to prepare their memoirs and reminiscences of great events that occurred during their Administrations. In particular, I was aware that Presidents Hoover, Truman, Eisenhower and Johnson had each published one or more volumes recounting periods of their presidencies.

23. The installation of the recording capability for conversations in the Oval Office and Executive Office Building and elsewhere stemmed in large part from a recommendation I received from President Johnson by way of a close mutual friend. President Johnson sent word to me that he had learned that as one of my first actions upon arriving at the White House I had ordered the removal of the recording devices he had installed there. President Johnson said that the recordings he had made of his conversations while President had proved to be exceedingly valuable in preparing his memoirs and he urged that I reinstall the recording devices. Thereafter, I consented that this be done, having the expectation that I, like President Johnson, would retain during my life exclusive control over access to the recordings and that after my death they would be placed in a Presidential Library with restrictions prohibiting access for a sufficiently long period of time that no participant in conversations with me would incur any adverse effects. It was further my intent that before placing the recordings in a Presidential Library I would delete from them conversations containing purely personal discussions such as those with members of my family and friends.

24. My intent with regard to the ultimate disposition of the White House tape recordings has not changed. Despite the provision in a letter I wrote on September 6, 1974 to Mr. Arthur Sampson, Administrator of the General Services Administration, calling for destruction of the tape recordings after September 1979 in the event

of my death and no later than September 1984, it was always my desire and intention to preserve for scholars in generations to come the tape recordings of my presidency so that they would have available a full and valuable historical tool. I viewed the depository agreement of September 7 as purely a temporary arrangement necessitated by the fact that I had left office prior to the finalization of plans for a Library to house my presidential materials. When counsel to President Ford recommended to my attorneys the provision calling for automatic destruction of the recordings as of five years from the date of the instrument, I viewed the suggestion as strictly an interim measure to insure that in the event I died before completing arrangements for a Presidential Library, the White House recordings would not be available for unauthorized public disclosure.

25. The depository agreement itself was solely the product of my understanding that it was required in order for the incumbent Administration to receive the agreement of the Special Prosecutor to transport the materials to California. I was informed through counsel that without the depository agreement none of the materials would be shipped. Thus, the provision concerning joint control over access between myself and the General Services Administration and the provision guaranteeing that all material would remain available by subpoena for at least five years were expressly included to accommodate the interests of the Special Prosecutor.

26. Since the time that the temporary depository agreement was executed, I have engaged in lengthy discussions with officials of the University of Southern California in Los Angeles. Those discussions have culminated in an understanding between the University and myself whereby I have agreed to designate a library facility to be constructed by the University as the

depository for all of my presidential and pre-presidential materials which I will donate as a gift to the United States with the condition that they be housed at the University of Southern California facility. Implementation of my understanding with the University of Southern California rests in large part upon whether my presidential materials will ultimately be available for such disposition as I direct. However, I have informed the University that it is my intent to utilize its Presidential Library as the depository of my presidential materials, following the practice of Presidents Hoover, Roosevelt, Truman, Eisenhower, Kennedy and Johnson. Also, following the practices of former Presidents, it is my intent to utilize the assistance of members of the National Archives staff to review portions of my presidential material. Like Presidents Truman, Eisenhower and Johnson, I intend to request the opportunity to assist in the selection of the archivists who will be reviewing the files that I have described as containing my personal materials. And, of course, I intend to reserve for my own review those materials which I consider to be so private and confidential that no one else should participate in the initial review.

27. Apart from the White House tape recordings, others of my presidential materials were created as a result of information I had concerning President Eisenhower's practices while in office. I was aware that President Eisenhower always had a member of his staff record notes of his meetings with visitors. Following the meeting, the staff member would prepare a memorandum for the President's file. These memoranda, though not as accurate accounts as tape recordings, nevertheless provided a record of the discussions. President Eisenhower, after leaving office, utilized these memoranda in the preparation of his memoirs, much as President Johnson

utilized his tape recordings. President Eisenhower's son, John S. D. Eisenhower, informed me of this fact shortly before I assumed office. I adopted the practice during my Administration and these memoranda of my meetings are now included among my presidential materials.

28. At the time I authorized my counsel to initiate this suit challenging the constitutionality of the congressional act seizing for purpose of public disclosure the presidential materials of my Administration, I was aware that the Special Prosecutor had taken steps to gain direct access to those materials without my authorization or consent. I felt that in light of the Supreme Court's decision in *United States v. Nixon,* that the Special Prosecutor was entitled to receive such of the presidential materials as were demonstrably relevant to his criminal investigations, but was not entitled to gain the type of unrestricted direct access that would permit members of his staff to review my personal and presidential materials without the safeguards provided by subpoena or search warrant procedures. Beyond that, it was my opinion that neither Congress nor civil litigants seeking access to the materials under the Freedom of Information Act had any lawful right of access. Consequently, I authorized my counsel to discuss with the Special Prosecutor procedures that might be utilized to provide his office with relevant items from among the presidential materials. In a spirit of compromise, an accommodation was reached and I am informed that the Special Prosecutor has now received those items which he desires. Aside from the interests of the Special Prosecutor, however, I have directed my counsel to continue to seek a judicial determination as to the constitutionality of the legislation and the validity of claims for access based upon rights asserted under the Freedom of Information Act.

29. It has now been just less than one year since I resigned from the Presidency. For six months of that period I had no access whatever to my pre-presidential materials which remained in the White House when I resigned and to which no one claimed any right of ownership or control. And today, even though for nearly two hundred years former Presidents of the United States have been considered the owners of their presidential materials, the materials of my Administration have been impounded at a location nearly three thousand miles from my home in California and under restrictions which prevent any access by me or my authorized agents for any purpose other than to comply with requests for access by the Special Prosecutor or demands for production of materials pursuant to subpoenas. These restrictions and the retention of the materials in Washington have precluded me from reviewing any of my presidential materials in connection with the preparation of the memoirs which I have already begun. It has also deprived me of eleven extremely valuable months that I could have used to review, organize, categorize and otherwise prepare the materials for inclusion in a Presidential Library. I am sixty-two years old and desire to complete the task of reviewing my presidential materials during my lifetime. Each month that these materials remain unavailable for that purpose can never be recaptured and thus represents an invaluable loss. The same is true with regard to my desire to have access to my presidential materials in preparing my personal memoirs. I value quite highly the need to have such access and do not feel that I can adequately complete either project without it.

30. Because I have already agreed to donate my presidential materials to the United States to be included in a Library at the University of Southern California, this

affidavit is not being filed, nor is the suit in which it is submitted being pressed, solely in my own behalf. As with so many important questions, there is a principle involved. Presidents, Vice Presidents, Senators, and Members of the House of Representatives and the Judiciary all carry great burdens of public service. They must make the best decision possible when matters great or small come before them. In this regard the principle of confidentiality permeates each constitutional office. Thus, I am filing this affidavit in support of that principle as well as the principle of privacy which applies more directly to me personally.

STATE OF CALIFORNIA)
) ss.
COUNTY OF SAN DIEGO)

Richard Nixon, being first duly sworn, deposes and says:

That he is the plaintiff in the above-entitled action; that he has read the foregoing affidavit, and knows the contents thereof; that the same is true of his own knowledge, except as to those matters which are therein stated on his information or belief, and as to those matters he believes it to be true.

/s/Richard Nixon
RICHARD NIXON

Subscribed and sworn to
before me on June 25, 1975.

/s/David C. Welch
DAVID C. WELCH
Notary Public in and for the
County of San Diego and State of California

[SEAL]

[Caption Omitted in Printing]

AFFIDAVIT OF JOHN S. D. EISENHOWER

County of Montgomery)
) ss.
State of Pennsylvania)

John S. D. Eisenhower, being duly sworn, hereby deposes and says:

1. My permanent residence is in the State of Pennsylvania.

2. At the present time I am serving as Chairman of the President's Advisory Committee on Refugees.

3. I am the son of Dwight David Eisenhower, who was President of the United States from January 20, 1953 to January 20, 1961.

4. During the period June 6, 1944 to March 27, 1963, I served as a regular officer in the United States Army. I am currently a Brigadier General in the United States Army Reserve.

5. During various periods of my military service I was stationed near Washington, D. C., and was able to work closely with my father and members of his staff during his term as President. For the last twenty-seven months of his term in office I worked as a Staff Assistant to my father in the White House. During the course of my work at the White House, and through discussions with my father and his aides, I acquired a general knowledge of the nature of the workings of the Presidency and a specific knowledge of the daily operations of the White House Office. After President Eisenhower left office, I continued to work directly with him in a capacity I will more fully describe below.

6. It was President Eisenhower's practice while in office to have at least one of his staff members attend nearly all meetings between the President and others, whether they were heads of foreign states, Members of Congress, government officials or private citizens. Following the meeting, the staff member would prepare a memorandum for the President's file setting forth a description of the meeting, the substance of the subjects and viewpoints discussed, and the course of action, if any, to be taken thereafter. These memoranda were prepared at the direction of and exclusively for the use of the President.

7. Notes were also taken of the substance of matter discussed at all cabinet meetings.

8. It was also President Eisenhower's practice to have his personal secretary, Mrs. Ann C. Whitman, listen on an extension telephone to most all of his conversations in the oval office and to record by notation the substance of the conversations. These notations were subsequently transcribed and made available to the President. Thereafter they were included in the President's files.

9. Neither the memoranda of President Eisenhower's meetings nor his secretary's notes of the Presidential telephone conversations were prepared for public use or review. All of the notes and memoranda, however, were available to my father after he left office and were used by him as an invaluable resource in preparing his memoirs for publication.

10. During President Eisenhower's term in office he engaged in extensive correspondence with a number of persons. On occasion the President would seek out the opinions and recommendations of one or more members of the public and private sectors of the nation. In

response he received candid and frank statements of the writers' views.

11. Some of the topics encompassed by the President's correspondence pertained to the President's constitutional duties, such as the signing of and vetoing of enrolled bills passed by Congress. Others related to the President's duties as a leader of the nation, such as the formulation of economic policy. Another category concerned the President's duties as the head of his political party. This correspondence was retained in files maintained by the President's personal secretary (to this date referred to as "the Whitman files").

13. Near the conclusion of my father's second term as President, I began the process of arranging for the disposition of all of the materials generated by or retained within the Office of the President during his Administration. Through conversations with President Eisenhower and others, I was aware that prior to the time my father arrived in the White House on January 20, 1953, the prior administration had removed from the White House and Executive Office Building offices all staff and central files pertaining to the work of that administration. My father informed me that the only material left for him was a single page of instructions to be used in the event of national crisis and National Security Policy Documents. All other files had been removed. We were informed that this same general procedure had been followed by every prior administration, and we determined that we would adopt the same policy.

14. An integral part in determining the disposition of the Eisenhower presidential papers was the preparation and execution of the letter of intent dated April 13, 1960, addressed to Mr. Floete from President Eisenhower. As that letter of intent indicates, President

Eisenhower, in donating his materials to the United States, placed under seal those papers which contain "statements made by or to [President Eisenhower] in confidence, papers relating to family or private business affairs, papers containing statements which might injure or harass individuals or their families" and "such other individual files as I, or my representative or the Administrator of the General Services may specify." It was thus that President Eisenhower decided to maintain the confidentiality of the documents he desired not to be made public.

15. To begin the task of packaging the presidential materials for shipment from the White House, White House Staff Secretary, A. J. Goodpaster, prepared a memorandum to be sent to all members of the White House staff directing them to package at least 75 percent to 90 percent of their individual files and deliver them to a temporary storage area preparatory to transfer to Abilene, Kansas. This memorandum was circulated approximately December 15, 1960, and the requested deadline for packaging and transfer was December 23. On January 11, 1961, a second memorandum was sent by Wilton Persons to all staff members reiterating the directive for packaging of the Eisenhower Presidential files. In this memorandum, the staff was told to "...clear out every last possible paper (other than strictly personal) from their files!!!" and to box, label, and place them in the custody of GSA by the end of the day, January 16. Nothing was to be left in any office that was not "completely essential."

16. With regard to the material, if any, that was to be left for the incoming administration, the memorandum directed, that such items should be "cleared with the President" through the office of staff secretary.

17. On the afternoon of January 19, 1961, within hours of the inauguration of John F. Kennedy, I personally toured the staff offices and gathered several storage cabinet safes that had not previously been prepared for shipment. Apart from these safes, there were no files nor other items of Presidential materials left for the incoming administration.

18. With respect to the President's personal files, they had previously been packaged for shipment to President Eisenhower's future office in Gettysburg. The only material left by President Eisenhower for President Kennedy was a sachel containing a series of orders and instructions to be of assistance in the event of nuclear attack or other national crisis.

19. After leaving office, President Eisenhower retired to his home in Gettysburg. A principal activity thereafter, for several years, was the review of his Presidential materials and the preparation of his memoirs. I accompanied my father to Gettysburg and assisted him in these activities.

20. Among the tasks I undertook at my father's request and as his direct personal representative was to review all of the memoranda of Presidential meetings. President Eisenhower directed me to reclassify them from whatever classification they then held to "privileged." See Exhibit A. This classification was intended to reflect the fact that the memorandum embodied confidential communication between the President and his aides.

21. On January 18, 1961, two days before leaving office, my father authorized eight persons within the limits of the security division to have access to his Presidential papers for the purpose of assisting him in their compilation. Therefore I was the only person at Gettysburg other than the President who had total access to his files.

22. During the time President Eisenhower's personal files were at Gettysburg, but at least three years after my father left office, I am aware of at least two instances in which he granted permission to an author or historian to have supervised access to certain strictly limited portions of the Whitman files in order to aid them in their research. I am also aware that during the same period President Eisenhower refused for various reasons to grant similar access to other persons.

23. On at least one occasion a member of the incumbent Kennedy Administration sought access to the Eisenhower files and was denied such access. On January 18, 1962, I received a telephone call from a staff member of the Office of International Security Affairs of the Department of Defense who explained that the State Department desired to reconstruct a portion of certain discussions between the United States and France concerning the Suez crisis in 1956. I replied to the staff member that it would be necessary for the incumbent administration to request such access to President Eisenhower's files from the President himself. To my knowledge no subsequent request was made and my father never instructed me to review the files to locate the information in question. At the time of this incident, I prepared a memorandum setting forth the substance of my conversation with his staff member. That memorandum is attached hereto as Exhibit B.

24. On another occasion, in approximately 1964, a request was made to provide President Johnson access to a letter sent from David Ben Gurian of Israel to President Eisenhower. That request was honored. Prior to his death, the highly secret materials which he no longer needed were transferred to Abilene.

25. Upon the death of President Eisenhower in 1969 all of the Whitman files which had been in his possession in Gettysburg since the close of the administration were packed and shipped to the Eisenhower Library in Abilene, Kansas. This transfer of custody was made under the same conditions with respect to access that had been imposed on the original shipment of staff and central office files sent to Kansas directly from the White House.

26. Since my father's death I have appointed an advisory committee known as the Eisenhower Manscript Committee to assist me in reference to the Eisenhower papers. This committee meets as required and communicates informally even more frequently concerning policy questions involving the imposition or relaxation of restrictions on public access to particular documents, segments of files or categories of materials. Although I have the authority to make the final determination of whether access to the Eisenhower Presidential materials should be restricted, the committee's recommendations are generally accepted and often reflect the suggestions of the library's professional staff. Recently approximately half of the so-called Whitman files have been opened to research. However, materials in these files that were classified or fell within the category of documents directed to remain under seal by the April 13, 1960 letter of intent remained sealed.

27. After leaving the White House and until his death, President Eisenhower used and treated his Presidential papers as his own personal property and at his death deeded them to the government in his will.

/s/John S. D. Eisenhower
JOHN S. D. EISENHOWER

Subscribed and sworn to before me this 30th day of June, 1975.

/s/Miriam T. [Illegible]
Notary Public

[SEAL]

Exhibit A

THE WHITE HOUSE
Washington

January 10, 1961

MEMORANDUM FOR

Lt. Col. John S. D. Eisenhower

Since you will be dealing with my papers in the near future, I would like you to accomplish the task for me of regrading all Memoranda of Conference in which I have participated to PRIVILEGED rather than the security classifications which they now bear.

/s/D. E.

Exhibit B

January 18, 1963

MEMORANDUM FOR THE RECORD:

Mr. The Stanley, formerly of the White House Staff, and now an official in the International Security Affairs of

the Department of Defense, called this afternoon requesting an opportunity to check into the files of former President Eisenhower.

Apparently there is a search going on between Secretary Dillon, Mr. Nitze and members of the State Department to ascertain some facts (which Mr. Stanley could not give over the phone) pertaining to our discussions with the French at the time of the Suez crisis in 1956. I received the impression that the issue applied to a possible United States response to Khrushchev's threats to use "rockets" if the Suez operations were continued.

Apparently the French are currently making use of alleged inconsistencies in the U.S. position at that time in discussions now being held with the State Department. Secretary Dillon, who was Ambassador to France at the time in question, recalls a certain U.S. position which he represented to the French government, the French, on the other hand, claim that Ambassador Alphand in Washington received a different impression from the U.S. State Department. Mr. Dillon recalls writing a memorandum on the subject but such memorandum is not to be found in the State Department files or in the Dulles papers. Mr. Stanley's request is to make a check of President Eisenhower's files to ascertain whether they may be here. He did not, of course, insist on doing it himself and would be delighted for us to do it for him.

I explained to Mr. Stanley that had this request been made while President Eisenhower was still in office, such an arrangement would be easy. However, upon his leaving the Presidency and being succeeded by a new administration of different political persuasion, it is now necessary as a matter of principle to restrict access to the files to those to whom President Eisenhower gives personal permission to check. I indicated somewhat directly to Mr.

Stanley that the channel for this permission should not go from him as a junior staff officer to me as another. As procedure I suggested that if the issue is one which truly involves national security (which seems highly doubtful) then Secretary McNamara should feel free to telephone President Eisenhower in Palm Desert, California and obtain permission to send a representative to see him to explain exactly the nature of his request. If such request appears legitimate, then President Eisenhower would instruct me to do the required research within the files. Mr. Stanley thought this procedure would be feasible since the item in question is not a "crash" item with respect to time.

I then telephoned President Eisenhower in California at 5 P.M., EST, and advised what had been done. I alerted him that he might be receiving a phone call from Secretary McNamara, although I doubted seriously such would occur. President Eisenhower agreed completely, and expressed some surprise that any agency of the government would attempt to obtain permission to get into his papers through such an indirect approach. I explained that this had been a personal idea of Mr. Stanley's, based on our former association in the White House, and that Mr. Stanley had merely overlooked the requirement for protection of Presidential papers.

John S. D. Eisenhower

[Caption Omitted in Printing]

AFFIDAVIT OF WILLIAM J. HOPKINS

County of Montgomery :
: ss.:
State of Maryland :

WILLIAM J. HOPKINS, being duly sworn under oath, hereby deposes and says the following:

1. I am a resident of the State of Maryland and 65 years old. Until 1971, I was employed by the United States Government in various positions, beginning with the Department of Labor in 1929. In October of 1931, I was detailed to the Correspondence Section of the White House Office where I held various positions, including Assistant Chief of Correspondence. In 1943, I was appointed Junior Executive Clerk of the White House, the second highest Civil Service position in the White House Office. In 1948, I became the Senior Executive Clerk, a position I held until my retirement in 1971. This office, under the general administrative direction of the President and his staff, assists in providing for the orderly handling of documents and correspondence within the White House Office and in the organization and supervision of clerical and administrative services. President Johnson, perhaps in recognition of the contribution made throughout Government by civil servants and to the operation of the White House Office by its clerical staff, changed my title to Executive Assistant to the President; my duties, however, remained substantially unchanged.

2. The White House Office serves the President in the performance of the many detailed activities incident to his *immediate* office. It has served each of our Presidents in that capacity. With the creation of the Executive Office of the President (a so-called "umbrella" agency) in

1939 the White House Office became a division of that office, but remained a separate entity with its own clerical staff, its own budget, its own files, etc. In the past it has not served as an office of record. The Executive Office is comprised of such additional entities as for example the Office of Management and Budget, the Council of Economic Advisors, and the National Security Council. Each of these other entities is an office of record and maintains its own clerical staff, has its own appropriation and its own filing system, and is not serviced directly by the White House Office.

3. The Correspondence Section of The White House Office, in which I was employed between 1931 and 1943, was then and is now charged with several duties. If requested, correspondence section employees take dictation from members of the President's staff and from the President himself and assist in the preparation of correspondence generated in the White House. For example, President Roosevelt after a trip abroad during World War II wished to send personal letters to the families of American soldiers buried in a cemetery he visited; this task was handled by the Correspondence Section. I recall personally taking dictation from Presidents Hoover and Roosevelt, usually for correspondence or directional memoranda to members of his staff. Another important duty of the Correspondence Section is to type speech drafts and, in final form, official documents of public record such as Executive Orders, Executive Proclamations, and Presidential Messages to Congress. Finally, the Section's major function is to handle the miscellaneous correspondence of the President and his staff. As mail is received in the White House Mail Room, it is directed, according to its content and addressee, to the President or members of his staff, to the White House Executive Clerk, or to the various executive

agencies. A great mass of incoming mail cannot be directed specifically to one of these entities because it deals with more general matters, offering general criticisms or congratulations to the President, expressing viewpoints on various matters which do not concern a particular office or agency, etc. The Correspondence Section prepares suggested replies in form for signature to a vast percentage of the miscellaneous Presidential mail forwarded to the Section for action. These suggested responses are forwarded to the appropriate member of the staff for approval and, if approved, for his signature.

4. The type of correspondence received by the White House Office includes by way of example congratulatory letters, views and suggestions on topical issues, requests for jobs, autographs or pictures, complaints about the actions of a federal agency, letters recommending applicants for federal service, and letters written by special interest groups requesting or recommending specific action on certain issues. They cover the entire panorama of Government. This correspondence may be addressed to the President, the President's staff, or simply to the White House. The vast majority is addressed to the President. Correspondence volume increased greatly over the years I served in the White House. The first major increase occurred in the Roosevelt Administration, caused by public reaction to the Depression, to President Roosevelt's fire-side chats, and generally to the increased role of government in American life; the type and content of correspondence, however, has not changed significantly over the years except as affected by current events.

5. From 1943 to 1971, my responsibilities included supervision of the operating units of the White House Office. As Junior Executive Clerk I reported directly to the Senior Executive Clerk; as Senior Executive Clerk, I

was under the general administrative direction of the President and his staff. Operating units of the White House Office, over which I had responsibility, were the Correspondence Section, described above, the File Room, Mail Room, Records Office, Telephone Service, Telegraph and Travel Service, Administrative Office, and Messenger and Miscellaneous Services.

6. The Records Office maintains a card record of categories of official Presidential actions. In the area of Presidential appointments this file dates from approximately 1913; the records of other Presidential actions may or may not date back to 1913, but, so far as I recall, 1913 is the earliest date for any card record in the Records Office. This file is the only permanent record in the White House of Presidential actions. It is not a "best-evidence" file, however. The White House has never been considered an office of record. The originals of official actions of the President, functioning in his constitutional or statutory role, are customarily preserved by records elsewhere. For example, an enrolled bill signed by the President into law is filed with and maintained in the National Archives. Presidential vetos or messages to Congress are lodged with the Clerk of the House and/or Secretary of the Senate. Presidential pardons are filed with the Department of Justice. Original documents of an official act by the President are not retained by the White House. The record index, however, kept by the Records Office does record the fact of the actions taken. The index consists of cards which set forth only the events; the file does not include any supporting documents evidencing the particular Presidential action. Supporting files if they exist are sent on a current basis to the Central File Room with the exception of enrolled bill files which are retained in the Records Office until the close of an Administration. The central files and enrolled bill files are

packaged and sent to the departing President or to a place of his choice at the end of his Administration. The original of the executive orders and proclamations is sent to the National Archives at the time of promulgation. Another function of the Records Office is to assure, through research of the statutes, that prospective Presidential appointees are eligible under the statute. Files developed and maintained in connection with appointments by the President are also packaged and taken by the President at the end of his Administration.

7. The Administrative Office (officially known as Accounts, Purchases, Personnel, etc.) carries out such functions as this title implies. Numerous files developed and maintained by the Administrative Office are preserved by that office during successive Administrations; they are not taken from the White House by the retiring President.

8. At the end of each Presidential Administration under which I served, all of the files maintained by the Central File Room, as well as those maintained separately by the President's staff and his personal secretary, were packaged and shipped to a designated location selected by the retiring President or his representatives. The only files which remained for the incoming Administration were the files of the Administrative Office, the card file in the Records Office, and a small "precedent file" maintained in Central Files. This precedent file is quite small in volume, approximately four file cases. It began approximately 100 years ago and is most incomplete. In the main it consists in more recent years of copies of documents which, because of their unusual nature, the clerk's office determined would be of precedential value if the situation were to arise in the future. For example, when statehood was granted to Hawaii and Alaska, configuration of the American Flag had to be altered. It

is my recollection that we developed a precedent file relating how this matter was handled so that future Administrations would have a guide if another state were to be admitted at a later time. In such instances, however, only copies of documents are customarily used for the precedent files. Of course, nothing of a political or personal nature is maintained in the precedent file. The source document is considered a Presidential paper and is included with the files taken by the President at the time he leaves office.

9. When I first joined the White House Office in 1931, under President Hoover, the size of the staff was approximately 100 persons, half of whom were detailed from the Departments and Agencies. Today the White House Office staff numbers approximately five hundred. The Central File Room in 1931 was accordingly a small room located in the west wing of the White House. Its staff consisted, as I recall, of six persons. The filing system at that time was bifurcated, consisting of the alphabetical file and the President's Personal File (PPF). I was informed at the time (1931) that this system had been in effect at least since the Administration of Theodore Roosevelt and probably longer. Important letters or documents sent to Central Files were included in the PPF (or official) file. Copies thereof, or less important documents, were cross-referenced in the alphabetical file which was comprised in large degree of correspondence from the general public. At the end of each Administration, up to and including the Hoover Administration, I was told the alphabetical file was destroyed. The PPF file, on the other hand, consisting of the official, political and other personal materials of the President, was packaged and sent to a location designated by the outgoing President. Since and including the Franklin D. Roosevelt Administration, with the advent of

the innovative Presidential Library System, both categories of files have been retained and turned over to the outgoing President.

10. I recall that the practice of each President taking with him his files and materials accumulated in the White House during his term in office came as a surprise to the members of each incoming Administration. However, the files of a President and his staff reflect his actions taken, not only as the Chief Executive, but also as the Head of his party, as an individual politician, as a leader in world affairs, and as a private citizen. The materials reflecting each of these roles become comingled in the White House file; there is no segregation of personal, political and Presidential papers. Nor can there be successfully, because of the comingling of subjects in individual documents. Consequently, by the close of each Administration, members of the outgoing President's staff seemed to understand quite well the necessity for removal of all Presidential materials and to actively support the continuation of a practice in being since the time of George Washington, which they had earlier questioned.

11. Because of the death of President Roosevelt during his term in office, the packing and shipping of his files was less well prepared than during the changeover from President Hoover to President Roosevelt. President Roosevelt had already shipped to Hyde Park for storage some of his files which had become inactive. All of the files that remained in Central Files were packed in large boxes and sent to the National Archives within 72 hours of President Roosevelt's death. Nothing was left in Central Files except the small precedent file. The incoming mail which had not yet been acknowledged at the time of President Roosevelt's death was left unanswered, boxed for transfer to the National Archives, and for subsequent forwarding to Hyde Park. Although

President Roosevelt's material was in the Archives building temporarily, access to it was controlled by President Roosevelt's Private Secretary, Grace Tully, and later by a committee consisting of Grace Tully, Judge Samuel Rosenman, and others whom I do not presently recall.

12. President Roosevelt, like all other Presidents, maintained his own personal file which was not comingled with the files in Central Files. Grace Tully had responsibility for and control over access to this file, which consisted of materials more political or more sensitive than the materials normally sent to Central Files. Upon President Roosevelt's death, this file was sent to the Archives as well, where Miss Tully, having sole control over access, personally worked with the file for several months before its eventual transfer to the Roosevelt Library in Hyde Park.

13. The files of President Roosevelt's staff that were not maintained in Central Files were also packed and sent to the National Archives Building with the rest of the Presidential materials at the time of Roosevelt's death. Because of the abrupt change of Administrations, some of the staff members worked in the White House on President Truman's staff for an interim period, and maintained those materials in their files which were active at the time of the changeover. Shortly, however, even those materials were forwarded for inclusion among President Roosevelt's materials.

14. At the end of the Truman Administration, approximately 1600 file drawers of Presidential materials were shipped to Missouri at President Truman's request. We used old file cases found in the attic of the Old Soldier's Home in Washington, D.C. to package and ship these materials to Kansas City. President Truman's personal file

(which included daily summaries sent to President Truman from the National Security Council) were sent to a bank building in Kansas City where they were organized and maintained by President Truman's secretary, Rose Conway. It is my understanding that President Truman maintained control over this category of his files until his death.

15. The bifurcated alphabetical and PPF filing system was changed in time for the inauguration of the Kennedy Administration. The system was reorganized according to recommendations made by a study group appointed by Wayne Grover, then Archivist of the United States. The increased volume of Presidential materials, both generated and received by the White House, required reorganization. The present filing system is tailored specifically to the needs of the White House Office; to my knowledge there is no filing system similar to it in the Federal Government.

16. At the end of the Eisenhower Administration, the same procedure for packing and shipping the Presidential materials was used. As with the Hoover, Roosevelt, and Truman Administration, all of the materials in Central Files, the support files maintained in the Records Office, the files maintained separately by the President's staff, and the President's personal file maintained by his Private Secretary, Ann Whitman, were boxed and shipped to locations specified by President Eisenhower. Certain files were sent to Gettysburg, Pennsylvania where President Eisenhower personally worked with them. These Gettysburg materials included his personal file, popularly referred to as the "Whitman Files." Of course, the size of each President's personal file depended upon that President's method of operation. Most Presidents, for example, retained their own handwritten drafts or documents in their personal file; on the

other hand, I recall seeing in Central Files documents with a President's handwritten notations on it.

17. President Eisenhower's files, other than those sent to Gettysburg, were sent to Abilene, Kansas. Sensitive materials dealing largely with national security were sent to another secure location.

18. As with all other Presidents, President Eisenhower's staff was directed to pack and ship their files with the bulk of the Presidential materials. John Eisenhower, President Eisenhower's son, who was then a member of the President's staff, was instrumental in explaining to the Presidential staff which materials were to be boxed and shipped for the President.

19. When President Johnson succeeded to the Presidency there had been no opportunity for advance planning regarding disposition of President Kennedy's files. Many of President Kennedy's staff continued on for the time being as members of President Johnson's staff. Contrary to the rather immediate action in removing the files at the time of President Roosevelt's death, it was deemed necessary to retain most of President Kennedy's files at the White House for the time being for use by the Staff. In order to insure during this interim period that President Kennedy's files be kept inviolable with no comingling, at the direction of McGeorge Bundy, (a member of President Kennedy's staff who remained on with President Johnson for a time) I prepared a memorandum providing instructions to the staff on the handling of the files during the period when the files of both Presidents were active within the White House Office. A copy of the memorandum is attached to this Affidavit as Exhibit A. This dual operation worked itself out in a matter of months and eventually all of President Kennedy's files were removed from the White House Office in accordance with the pattern of his predecessors.

20. President Johnson was very much concerned with the preservation of his Presidential materials. I can recall instances in which he discussed with me and others concerning this matter. I recall one conversation in which President Johnson stated in effect that when a staff member comes aboard he comes with his hat in his hand and he should leave the same way. As a result of President Johnson's concern, frequent efforts were made to contact all staff members to advise them as to the separation of Presidential from their own personal materials; a memorandum providing guidelines for this separation was attempted but never distributed.

21. The transition from President Johnson to President Nixon was similar to all other transitions with respect to the files. A team from the General Services Administration assisted in the advance planning. All Presidential materials in the Central Files, supporting files in the Records Office, staff files, and President Johnson's personal files, were packed and shipped to the Johnson Library in Austin, Texas, at the direction of President Johnson.

22. It was my experience while Senior Executive Clerk that very infrequently would a member of any incumbent Administration need access to Presidential materials of a prior Administration. In those few instances in which this occurred, which I can only generally recall, my office would serve on occasion as intermediary conveying a request to the person controlling access to the prior President's file. If in my opinion, or in the opinion of others in my office, a request involved access to an essentially political document or in some other manner did not represent a legitimate request for necessary documents, my office would suggest to the person seeking the material that if they wished to pursue

the matter they contact the former President's representative directly.

/s/William J. Hopkins
WILLIAM J. HOPKINS

Subscribed and sworn to
before me this 30th day
of June, 1975.

/s/Helen L. Benson
Notary Public

My Commission Expires:
July 1, 1978

EXHIBIT A

THE WHITE HOUSE
Washington

November 29, 1963

MEMORANDUM FOR THE WHITE HOUSE STAFF:

By custom and tradition, the files of the White House Office belong to the President in whose Administration they are accumulated. It has been the invariable practice, at the end of an Administration, for the outgoing President or his estate to authorize the depository or disposition to be made of such files.

President Taft in his book "Our Chief Magistrate and his Powers," made the following reference to this practice:

> "The . . . office of the President is not a recording office. The vast amount of correspondence that goes through it, signed either by the President or his secretaries, does not become the property or a record of the Government, unless it goes on to the

official files of the Department to which it may be addressed. The retiring President takes with him all the correspondence, original and copies, which he carried on during his Administration. . . ."

In the interest of continuing this practice the President has directed that, so long as President Kennedy's files remain in the White House Office, there is to be no intermingling of the files of the two Administrations. This applies of course both to the Central Files and the files in the offices of the various members of the staff.

Papers of the White House Office at the time of President Kennedy's death as well as those enroute at that time and intended for him shall be considered as belonging to the Kennedy Administration files. Any papers relating to President Kennedy's funeral are also to be included in this category.

All other papers now accumulating in the White House Office will constitute a new set of files for President Johnson.

/s/William J. Hopkins
William J. Hopkins
Executive Clerk

EXHIBIT D

[Caption Omitted in Printing]

AFFIDAVIT OF RAYMOND G. LARROCA

City of Washington :
: ss.:
District of Columbia :

RAYMOND G. LARROCA, being duly sworn, deposes and says as follows:

1. I am a resident of Washington, D. C. and an attorney admitted to practice before the Supreme Court of the United States and the federal and local courts in the District of Columbia.

2. I have in the past and do now presently represent former President Richard Nixon.

3. In the course of said representation, I have been required to determine the existence of, locate, and review certain tape recorded conversations between then President Nixon and his aides, or others, in the Oval Office, in the Executive Office Building, and on telephones serving not only those offices but also his residence.

4. Based upon my experiences in accomplishing the review of these tape recorded conversations, I can state that,

(a) The conversations which occurred in the Oval Office are at times recorded on a single reel of tape which spans more than one day (and sometimes more than two days), while at other times, a single day's conversations may extend over more than one tape reel.

(b) Recorded conversations that occurred in the President's office in the Executive Office Building during the same day may appear on separate tape reels but not sequentially; while conversations occurring on different days may appear on the same reel, but again not sequentially.

(c) There is to my knowledge no known effective topical index to the tape recorded conversations.

(d) The only partial guide for the location and review of the recorded conversations that is known to me is President Nixon's daily diary which attempts to indicate the physical loca-

tion of the President during the day and to identify the persons who were with him. In a very small number of instances, primarily during the first portion of the Nixon Administration, the diary may indicate by general description the subject matter of a meeting, but in such instances the actual recorded conversation may not and often is not limited to the indicated subject. Additionally, I have found the President's diaries to be often incomplete or inaccurate as to the identification of the persons whose conversations with the President are actually recorded.

(e) The President's diaries do not reflect the recordation of personal exchanges and conversations of the President with members of his personal staff, his secretary, members of his family, and others.

(f) The actual conversations recorded on the White House tapes deal with constantly changing topics, shifting back and forth between what might be described as matters relating to the President's official duties, his political activities and his personal affairs. This variety of subjects often alternate or recur even within a single conversation segment with a particular individual or individuals. I recall reviewing very few conversations that were not interspersed with such unrelated and disparate matters.

(g) In order to locate particular conversations or to locate, identify or segregate particular topics or categories of topics within a given conversation or period of time, it is necessary to listen to several tapes in their entirety. This is because there is no announcement of the speakers on the tapes themselves, and it is initially necessary to establish a time reference, then to

identify individual speakers and/or subjects. For me even to accomplish the purpose of my limited review, I was required to listen to very substantial portions of unrelated conversations, including purely personal and/or political matters before I could locate conversations or segments thereof relevant to the subject of my review.

(h) Based upon my experience in reviewing the White House recordings of the conversations of former President Nixon, it is my opinion that in order for any person or persons to determine what in any such recording relates to any particular subject, or what part of a recording reel contains particular conversations or categories of conversations, that person would have no alternative but to review entire tape reels and that such review to locate, identify, segregate and categorize the conversations would entail the review of innumerable matters of private conversations.

5. In the course of representing former President Nixon, various requests for access to his presidential materials have been brought to my attention. I personally know, or have been informed of, demands for access by committees of the United States Congress, government agencies, commissions, and entities, and other persons in their private or business capacities.

6. Demands for the production of Mr. Nixon's presidential materials by committees of the United States Congress and Members thereof are as follows:

(a) Representative John E. Moss, Chairman of the Oversight and Investigative Subcommittee of the House Committee on Interstate and Foreign Commerce, by letter on May 6, 1975, requested transcripts of any conversations

recorded in the White House between September 1, 1970, and October 1, 1971, which involve officials of Ford Motor Corporation or Chrysler Corporation and which pertain to the implementation by the Department of Transportation of safety belt or airbag standards.

(b) Representative Bella S. Abzug, by letter of May 15, 1975, requested access to President Nixon's correspondence with then-Prime Minister Heath of England and then-President Pompidou of France which she believed pertained to White House support for the Anglo-French Concorde supersonic transport.

(c) Representative John D. Dingell, Chairman Subcommittee on Activities of Regulatory Agencies of the House Select Committee on Small Business, by letter on January 15, 1975, requested access to certain presidential materials of the Nixon Administration relating to Executive Order 11451 which in January, 1969 established the Commission on Personnel Interchange.

(d) The Joint Committee on Internal Revenue Taxation, by letter of March 13, 1975, requested documents which included records and memoranda allegedly relating to the use of the Internal Revenue Service for political purposes.

(e) Senator Frank Church, Chairman, Senate Select Committee to Study Governmental Operations with Respect to Intelligence Activities, requested access to certain records generated during former President Nixon's term believed by the Committee to be relevant to its inquiry as authorized by S. Res. 21.

7. Demands that have been made for access to former President Nixon's presidential materials by various governmental agencies, commissions, and other entities are as follows:

(a) William J. Guste, Jr., Attorney General of Louisiana, by letter dated May 21, 1975, requested transcripts of taped discussions between H. R. Haldeman and former President Nixon during October or November, 1971, relating to the banning of the pesticide DDT.

(b) Phillip E. Areeda, Counsel to President Ford, on September 25, 1974, requested access to the tape of a conversation between former President Nixon and Richard Moore on April 19, 1973, regarding references pertaining to then-Governor Nelson Rockefeller.

(c) David Belin, Executive Director of the Commission on CIA Activities, by letter of April 22, 1975, requested access to all materials relevant to the conversation between Richard Helms and then President Nixon on October 8, 1971, as well as all materials relating to requests for assistance and support directed by President Nixon and members of the White House staff to the CIA pertaining to matters other than foreign intelligence.

8. Other requests for access to the presidential materials of the Nixon Administration include the following:

(a) Brit Hume, ABC News, by letter on January 24, 1975, requested copies of four documents described in an affidavit of J. Fred Buzhardt, former Special Counsel to the President, filed on October 9, 1973, in *Center on Corporate Responsibility, Inc. v. Shultz,* C.A. No. 73-846 (D.D.C.).

(b) Bob Woodward and Carl Berstein, *The Washington Post,* on October 22, 1974, requested access to daily logs, schedules, lists of telephone calls, schedules of visitors, and lists of the President's travel companions during the period from April 25, 1974 to August 9, 1974.

9. Litigation in which I am aware or am informed that there have been attempts to gain access to presidential materials of the Nixon Administration include the following:

(a) *Halperin v. Kissinger,* C.A. No. 73-1187, D.C.D.C. Plaintiff in this action has subpoenaed presidential materials relating to the interception of telephonic communications by electronic surveillance.

(b) *Hellman v. Sampson,* C.A. No. 74-1551 D.C.D.C. A group of playwrights, film makers, writers, and lawyers seek disclosure of 147 tape recordings of presidential conversations.

(c) *Reporters Committee for Freedom of the Press v. Sampson,* C.A. No. 74-1533, D.C.D.C. Several groups and individuals representing historians, reporters and others seek access to all of the former President's papers and materials under the Freedom of Information Act.

(d) *Oliver v. Committee for the Re-Election of the President,* C.A. No. 1207-73, D.C.D.C. Plaintiff in this case seeks, without limitation, production of White House tape recordings covering several months.

(e) *Democratic National Committee v. McCord,* C.A. No. 1233-72, D.C.D.C. Defendant McCord seeks access to tapes of certain presidential conversations.

(f) *Sun Oil Co. v. United States,* No. 806-71, U.S. Ct. of Claims. Plaintiffs seek discovery of four documents containing or reflecting communications with or between former President Nixon and his advisors.

(g) *United States v. National Broadcasting Co.,* C.A. No. 72-819-RJK; *United States v. Columbia Broadcasting System,* C.A. No. 72-820-RJK; *United States v. American Broadcasting Co.,* C.A. No. 72-821-RJK, United States District Court for the Central District of California. The three defendant networks sought discovery of presidential documents by a Federal Rules of Civil Procedure Rule 34 request.

(h) *Dellums v. Powell,* C.A. No. 2271-71, D.C.D.C. Plaintiffs subpoenaed tape recordings of presidential conversations of May 1 to May 5, 1971.

(i) *Apton v. Wilson,* C.A. No. 798-72; *Kuhn v. Wilson,* C.A. No. 956-71, D.C. D.C. Parties in these consolidated actions, by subpoena, sought access to presidential conversations occurring between March 1 and May 31, 1971.

(j) *Rothblatt v. Nixon,* C.A. No. 74-1080, D.C.D.C. The Plaintiff made a Rule 34 request for all tapes relating to the payment of legal fees to defendants in Watergate related actions.

(k) *United States v. Means,* Crim. No. 73-5035; *United States v. Banks,* Crim. No. 73-5034, D.C.S.D. The defendants in these cases subpoenaed tapes relating to the events at Wounded Knee.

/s/Raymond G. Larroca
RAYMOND G. LARROCA

Subscribed and sworn to
before me this 30th
day of June, 1975.

/s/Sandra M. Martin
Notary Public

My Commission Expires:
April 30, 1979

EXHIBIT E

DESCRIPTION OF THE WHITE HOUSE TAPING SYSTEM

During the term of Richard M. Nixon as President of the United States, three tape recording systems (the "systems") were installed for the purpose of recording the President's conversations. The three were located: (1) in the President's Oval Office of the White [House], and his office in the Executive Office Building ("EOB"); (2) in the President's study in the Aspen Lodge at Camp David; and (3) on the telephones serving the Oval Office, the EOB office, the Lincoln Sitting Room of the White House residence, and the study at Camp David.

Each of the systems was installed under the supervision of the Technical Security Division of the United States Secret Service. The system serving the Oval Office and the EOB office (the "office system") was installed in February, 1971 and was disconnected on July 18, 1973. The system serving the Aspen Lodge study and telephone (the "Camp David system") was installed in February or March, 1972 and was disconnected on July 18, 1973. The system serving the telephones in the Oval Office, EOB Office and Lincoln Sitting Room (the "telephone system") was installed in February, 1971, and was disconnected on July 18, 1973.

The telephone system was designed to record on a single recording machine all conversations that occurred on any of the telephones served by the system. The telephone taping mechanism was activated by a voltage control relay. When the receiver on any one of the three telephone extensions was lifted, recording commenced. The recording was deactivated by the voltage control relay when the receiver was replaced on its cradle.

The office system was designed to record conversations in the Oval Office and the EOB office on separate recording machines, each working on a voice operated relay so that recording began when activated by a voice or noise.

Each recording machine utilized five inch tape reels containing 1,800 feet of tape. The recording speed was 15/16ths inch per second. A single five-inch reel would be used to record approximately six hours of conversation.

At such time as a tape reel was fully recorded, it was rewound, removed, placed in a storage box, dated, identified as "telephone", "EOB", or "Oval Office", and placed first in a cabinet where the recording equipment was stored and subsequently put in a safe.

The system was designed to, and, so long as the tape reel was replaced when required, did in fact record all conversations that occurred in the offices in which the system was installed and on the telephones covered by the system. There was no manual override device by which the recording equipment could be deactivated from within any of the offices.

The Technical Security Division of the U.S. Secret Service supervised the operation of the systems and retained custody over all tape recorded reels until July 18, 1973, at which time the system was deactivated and custody transferred to the Office of the President.

The tape recorded reels containing the conversations recorded during the period in which the systems were installed are presently stored in the EOB in a locked and alarmed room, the security of which is maintained by the U.S. Secret Service. The custodian of the recorded tape reels is Mr. Philip W. Buchen, Counsel to President Ford, and his agents.

EXHIBIT F

THE WHITE HOUSE

TEXT OF A LEGAL OPINION
BY THE ATTORNEY GENERAL

September 6, 1974

The President
The White House.
Dear Mr. President:

You have requested my opinion concerning papers and other historical materials retained by the White House Office during the administration of former President Richard M. Nixon and now in the possession of the United States or its officials. Some such materials were left in the Executive Office Building or in the White House at the time of former President Nixon's departure; others had previously been deposited with the Administrator of General Services. You have inquired concerning the ownership of such materials and the obligations of the Government with respect to subpoenas and court orders addressed to the United States or its officials pertaining to them.

To conclude that such materials are not the property of former President Nixon would be to reverse what has

apparently been the almost unvaried understanding of all three branches of the Government since the beginning of the Republic, and to call into question the practices of our Presidents since the earliest times. In *Folsom v. Marsh*, 9 F. Cas. 342 (No. 4901), 2 Story 100, 108-109 (C.C.D. Mass, 1841), Mr. Justice Story, while sitting in circuit, found that President Washington's letters, including his official correspondence,[1] were his private property which he could bequeath, which his estate could alienate, and in which the purchaser could acquire a copyright. According to testimony of the Archivist of the United States in 1955, every President of the United States beginning with George Washington regarded all the papers and historical materials which accumulated in the White House during his administration, whether of a private or official nature, as his own property.[2] A classic

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[1]The official documents involved in the case were:

Letters addressed by Washington, as commander-in-chief, to the President of Congress.

Official letters to governors of States and speakers of legislative bodies.

Circular letters.

General orders.

Communications (official) addressed as President to his Cabinet.

Letter accepting the command of the army, on our expected war with France. 2 Story at 104-105.

The clear holding on the property point (*Id.* at 108-09) is arguably converted to dictum by Justice Story's later indication, in connection with another issue, that copyright violation with respect to the official documents did not have to be established in order to maintain the suit. (*Id.* at 114).

[2]Statement of Dr. Wayne C. Grover, Archivist of the United States, during the House Hearings on the Joint Resolution of August 12, 1955, 69 Stat. 695, *To provide for the acceptance and maintenance of Presidential libraries, and for other purposes* (now

[footnote continued]

exposition of this Presidential view was set forth by President Taft in a lecture presented several years after he had left the White House:

> The office of the President is not a recording office. The vast amount of correspondence that goes through it, signed either by the President or his secretaries, does not become the property or a record of the government unless it goes on to the official files of the department to which it may be addressed. The President takes with him all the correspondence, original and copies, carried on during his administration. Taft, *The Presidency* 30-31 (1916).

Past Congressional recognition of the President's title is evidenced by the various statutes providing for Government purchase of the official and private papers of many of our early Presidents, including Washington, Jefferson, Madison, Monroe and Jackson. *See* 1955 Hearings at 28, 39-42.

Even if there were no recent statutory sanction of Presidential ownership, a consistent history such as that described above might well be determinative. As the Supreme Court said in *United States v. Midwest Oil Co.*, 236 U.S. 459 (1915):

> [G]overnment is a practical affair intended for practical men. Both officers, law-makers and citizens naturally adjust themselves to any long-continued action of the Executive Department—on the presumption that unauthorized acts would not have

codified in 44 U.S.C. 2101, 2107 and 2108; hereinafter referred to as the "Presidential Libraries Act"), Hearing before a Special Subcommittee of the Committee on Government Operations, House of Representatives, 84th Cong., 1st Sess., on H.J. Res. 330, H.J. Res. 331, and H.J. Res. 332 (hereafter referred to as "1955 Hearings"), pp. 28, 45.

> been allowed to be so often repeated as to crystallize into a regular practice. That presumption is not reasoning in a circle but the basis of a wise and quieting rule that in determining the meaning of a statute or the existence of a power, weight shall be given to the usage itself—even when the validity of the practice is the subject of investigation. *Id.* at 472-73.
>
> * * *
>
> [W]hile no . . . express authority has been granted [by Congress], there is nothing in the nature of the power exercised which prevents Congress from granting it by implication just as could be done by any other owner of property under similar conditions. *Id.* at 474.

Moreover, with respect to the practice at issue here, there is recent statutory sanction. The 1955 Presidential Libraries Act, which serves as the permanent basis of the Presidential Library system, constitutes clear legislative acknowledgement that a President has title to all the documents and historical materials—whether personal or official—which accumulate in the White House Office during his incumbency. The Federal Records Act of 1950, 64 Stat. 587, which was the predecessor of the Presidential Libraries Act, authorized the Administrator of General Services to accept for deposit "the personal papers and other personal historical documentary materials of the present President of the United States." Section 507 (e), 64 Stat. 588. The word "personal" might have been read as intended to distinguish between the private and official papers of the President.[3] The

[3]Compare Section 507(e) with Section 507(a), dealing with the records of an agency. A memorandum prepared in the Office of the Assistant Solicitor General (now Office at Legal Counsel) on July 24, 1951 indicated that such a distinction between private and official Presidential papers would be inconsistent with historic

[footnote continued]

corresponding provision of the current law, however, 44 U.S.C. 2107 (1), avoids the ambiguity. It envisions the President's deposit of *all* Presidential materials, not only personal ones. During the House debate on the Presidential Libraries Act, Congressman Moss, who was in charge of the bill, expressly stated:

> Four. Finally, it should be remembered that Presidential papers belong to the President, and that they have increased tremendously in volume in the past 25 or 30 years. It is no longer possible for a President to take his papers home with him and care for them properly. It is no accident that the last three Presidents—Hoover, F.D. Roosevelt, and Harry Truman—have had to make special provisions through the means of the presidential library to take care of their papers. 101 Cong. Rec. 9935 (1935).

The legislative history of the Act reflects no disagreement with this position on the part of any member of the Congress. The hearings before a Special Subcommittee of the House Committee on Government Operations indicate congressional awareness of the Act's assumption that all Presidential papers are the private property of the President. 1955 Hearings at 12, 20, 28, 32, 52, 54, 58.

A recent discussion concerning ownership of Presidential materials appears in the report prepared by the staff of the Joint Committee on Internal Revenue Taxation involving the examination of President Nixon's tax returns. H. Rept. 93-966, 93d Cong., 2d Sess. (1974). The report points to the practice of Presidents since Washington of treating their papers, both private and official, as their personal property; and to the congres-

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precedents, and difficult if not impossible to maintain. It accordingly regarded the Records Act's use of the term "personal" as intended merely to exclude the permanent files of the Chief Executive Clerk discussed at page 12 below.

sional ratification of the practice in the 1955 library legislation. It concludes that "the historical precedents taken together with the provisions set forth in the Presidential Libraries Act, suggest that the papers of President Nixon are considered his personal property rather than public property." *Id.* at 28-29.

An apparent obstacle to Presidential ownership of all White House materials is Article II, section 1, clause 7 of the Constitution, which provides:

> "The President shall, at stated times, receive for his services a compensation, which shall neither be increased nor diminished during the period for which he shall have been elected, and he shall not receive within that period any other emolument from the United States, or any of them."

But objection based upon this provision is circular in its reasoning, except insofar as it applies to the blank typing paper and materials upon which the Presidential records are inscribed. For the records themselves are given to the President as an "emolument" only if one assumes that they are not the property of the President from the very moment of their creation. As for the blank typing paper and materials, which are of course of negligible value, they can be regarded as consumables, like electricity or telephone service, provided for the conduct of Presidential business. In any event, the Constitutional provision can simply not be interpreted in such a fashion as to preclude the conferral of anything of value, beyond his salary, upon the President. An eminent authority on the subject states the following:

> As a matter of fact the President enjoys many more "emoluments" from the United States than the "compensation" which he receives "at stated times"—at least, what most people would reckon to be emoluments. Corwin, *The President* 348 N. 53.

He gives as examples of such additional emoluments provided by the Congress the use of personal secretaries and the right to reside in the White House. *Id.* at 348-49.

Another obstacle to Presidential ownership of the materials in question is their character as public documents, often secret and sometimes necessary for the continued operation of government. However, without speaking to the desirability of the established property rule (and there is pending in the Congress legislation which would apparently alter it—S. 2951, 93d Cong., 2d Sess., a bill "[t]o provide for public ownership of certain documents of elected public officials"), it must be conceded that accommodation of such concerns can be achieved whether or not ownership of the materials in question rests with the former President. Historically, there has been consistent acknowledgement that Presidential materials are peculiarly affected by a public interest which may justify subjecting the absolute ownership rights of the ex-President to certain limitations directly related to the character of the documents as records of government activity. Thus, in *Folsom v. Marsh, supra,* Mr. Justice Story stated the following:

> In respect to official letters, addressed to the government, or any of its departments, by public officers, so far as the right of the government extends, from principles of public policy, to withhold them from publication, or to give them publicity, there may be a just ground of distinction. It may be doubtful, whether any public officer is at liberty to publish them, at least, in the same age, when secrecy may be required by the public exigencies, without the sanction of the government. On the other hand, from the nature of the public service, or the character of the documents, embracing historical, military, or diplomatic information, it may be the right, and even the duty, of the

> government, to give them publicity, even against the will of the writers. 2 Story at 113.

That portion of the Criminal Code dealing with the transmission or loss of national security information, 18 U.S.C. §793, obviously applies to Presidential papers even when they are within the possession of the former President.[4] Upon the death of Franklin D. Roosevelt during the closing months of World War II, with full acceptance of the traditional view that all White House papers belonged to the President and devolved to his estate, some of the papers dealing with prosecution of the War (the so-called "Map Room Papers") were retained by President Truman under a theory of "protective custody" until December 1946 *Matter of Roosevelt,* 190 Misc. 341, 344, 73 N.Y.S. 821, 825 (Sur. Ct. 1947); *Eighth Annual Report of the Archivist of the United States as to the Franklin D. Roosevelt Library* (1947) p. 1. Thus, regardless of whether this is the best way to approach the problem, precedent demonstrates that the governmental interests arising because of the peculiar nature of these materials (notably, any need to protect national security information and any need for continued use of certain documents in the process of government) can be protected in full conformity with the theory of ownership on the part of the ex-President.

Because the principle of Presidential ownership of White House materials has been acknowledged by all three branches of the Government from the earliest times; because that principle does not violate any provision of the Constitution or contravene any existing statute; and because that principle is not inconsistent

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[4]Section 11 of Executive Order 11652 makes explicit provision for declassification of Presidential material that has been deposited in the Archives.

with adequate protection of the interests of the United States; I conclude that the papers and materials in question were the property of Richard M. Nixon when his term of office ended. Any inference that the former President abandoned his ownership of the materials he left in the White House and his Executive Office Building is eliminated by a memorandum to the White House staff from Jerry H. Jones, Special Assistant to President Nixon, dated the day of his resignation, asserting that "the files of the White House Office belong to the President in whose Administration they were accumulated," and setting forth instructions with respect to the treatment of such materials until they can be collected and disposed of according to the ex-President's wishes. We are advised that the materials previously deposited with the Administrator of General Services were likewise transmitted and received with the understanding of continuing Presidential ownership.

I must, however, exclude one category of documents from the scope of this opinion concerning ownership and advise you that their status cannot be definitively determined on the basis of presently available information. Although the fact is not recorded in the published materials we have examined, our inquiry indicates that at least in recent memory certain "permanent files" have been retained by the Chief Executive Clerk of the White House from administration to administration. These include White House budget and personnel material, and records or copies of some Presidential actions useful to the Clerk's office for such purposes as keeping track of the terms of Presidential appointments and providing models or precedents for future Presidential action. Retention of these materials by the Chief Executive Clerk is of course not necessarily inconsistent with initial Presidential ownership. In light of the otherwise uniform

practice with respect to much more important official documents, relinquishment of these materials may reasonably be regarded as a voluntary act of courtesy on the part of the outgoing Chief Executive. I cannot, however, make an adequately informed judgment concerning these files without more extensive factual and historical inquiry which your need for this opinion does not permit. Of course, even if such inquiry should show that these particular documents have been regarded as Government property, that conclusion would not support a generalization of Government ownership with respect to the much more extensive other material covered by this opinion, as to which the Presidential practice and congressional acquiesence are clear.

As to the obligations of the Government with respect to subpoenas and court orders directed to the United States or its officials pertaining to the subject materials; Even though the Government is merely the custodian and not the owner, it can properly be subjected to court directives relating to the materials. The Federal Rules of Criminal Procedure authorize the courts, upon motion of a defendant, to order the Government to permit access to papers and other objects "which are within the possession, custody or control of the government. . . ." Fed. R. Crim. P. 16(b). A similar provision is applicable with regard to discovery in civil cases involving material within the "possession, custody or control" of a party (including the Government). Fed. R. Civ. P. 34(a). In addition, in both criminal and civil cases, a subpoena may be issued directing a person to produce documents or objects which are within his possession, but which belong to another person. Fed. R. Crim. P. 17(c); Fed. R. Civ. P. 45(b). *See, e.g., Couch v. United States,* 409 U.S. 322 (1973); *Schwimmer v. United States,* 232 F.2d 855, 860 (8th Cir., 1956), *cert. denied,* 352 U.S. 833: *United*

States v. Re, 313 F. Supp. 442, 449 (S.D.N.Y. 1970). I advise you, therefore, that items included within the subject materials properly subpoenaed from the Government or its officials must be produced; and that none of the materials can be removed or otherwise disposed of contrary to the provisions of any duly issued court order against the Government or its officials pertaining to them. Of course both the former President and the Government can seek modification of such subpoenas and orders, and can challenge their validity on Constitutional or other grounds.

Respectfully,

Attorney General

[Caption Omitted in Printing]

EVIDENTIARY SUBMISSION OF DEFENDANTS UNITED STATES AND ADMINISTRATOR OF GENERAL SERVICES

Pursuant to this Court's Order of June 13, 1975, defendants United States and Administrator of General Services hereby submit the following affidavits as their evidentiary presentation in this action:

1. Affidavit of Harry J. Middleton;

2. Affidavit of William R. Emerson executed on July 22, 1975;

3. Affidavit of William R. Emerson executed on July 23, 1975;

4. Affidavit of Jeanne Davis;

5. Affidavit of John Stewart;

6. Affidavit of Daniel J. Reed.

In addition, defendants intend to utilize the deposition of plaintiff Richard M. Nixon and the deposition of Jeanne W. Davis, which will be filed with the Court, as well as certain of the affidavits submitted by plaintiffs, various Stipulations, and documents attached thereto, which are being submitted by the parties, and various matters which are judicially noticeable.

Respectfully submitted,

REX E. LEE
Assistant Attorney General

IRWIN GOLDBLOOM

DAVID J. ANDERSON

JEFFREY AXELRAD

JOHN T. BOESE
Attorneys, Department of Justice
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Administrator of General Services
and United States of America
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Washington, D.C. 20530
Telephone: (202) 739-3446

[Caption Omitted in Printing]

AFFIDAVIT OF HARRY J. MIDDLETON,
DIRECTOR, LYNDON BAINES JOHNSON LIBRARY

CITY OF AUSTIN)
) ss:
STATE OF TEXAS)

HARRY J. MIDDLETON, being duly sworn, deposes and says:

1. I am Director of the Lyndon Baines Johnson Library ("the Library"), a unit of the National Archives and Records Service ("NARS") within the General Services Administration, located at The University of Texas in Austin, Texas. I was appointed to this position in May 1970 by James B. Rhoads, Archivist of the United States.

2. The seven professional archivists and five archives technicians who presently comprise the Library's archives staff were selected either by my predecessor, Dr. Chester Newland, or by myself. Of this group, the seven archivists—who review the papers in the Library's collections—have come to the Library through Civil Service channels. All but one have completed the requisite post-graduate course, either in the program administered by NARS or from graduate programs in archival practice located in various universities throughout the United States, including The University of Texas.

3. The terms of President Johnson's letter to the Administrator of General Services, August 13, 1965, contained the following provisions:

> (c) Archival personnel of the United States designated by the Administrator of General Services shall review the Materials to which this agreement applies and any Materials in the following categories shall be placed under seal of restriction:
>
> (i) Materials containing statements which may in any manner be used to injure, embarrass, or harass any person, or Materials which may in any manner be prejudicial to the conduct of foreign relations of the United States of America, or Materials containing statements made by or to me in confidence.
>
> (ii) Defense information that has been security classified pursuant to law to Executive order: *Provided that* such information may be declassified or otherwise made available in accordance with the procedures established by law or Executive order governing availability of security-classified information
>
> (iii) Papers relating to my family or private affairs, and papers relating to the families or private affairs of persons who have had correspondence with me.

4. In order to determine which documents are subject to these provisions, the archivists on the Library staff have been engaged in a detailed, page-by-page review of the materials in the collection. Thus, before a particular document is determined to be restricted, that document is read by at least one of the professional archivists on the Library's staff of archivists. As professionals, we treat such materials with absolute discretion, prudence and respect for the integrity of the privacy of the individual involved. We do not disclose

anything we have read of a private or personal nature in the course of our duties. The need to make judgments concerning such restrictions and to insure the confidentiality of the restricted material are situations confronted frequently by professional archivists in the Presidential Library system.

5. The review of non-classified materials relating to the period of the Johnson Presidency has been virtually completed. Of the approximately fifteen million pages of documents comprising these materials, less than one percent fell within the restricted categories. The remaining ninety-nine percent of the materials reviewed is now for all practical purposes open to public inspection. Approximately seventeen million pages of materials—one million of which are security classified Presidential papers, six million of which relate to the period prior to Mr. Johnson's Presidency, and ten million of which include papers donated by other persons and Federal Records—remain to be reviewed by the Library archivists.

6. In order to enable them properly to review and classify the materials in the collection, archivists on the Library staff have obtained the requisite security clearances needed for the performance of their duties. All of the members of the archives staff hold Top Secret clearances. Five members of the staff hold special clearances necessary to permit them to inspect materials more sensitive than those authorized to be seen by persons holding a Top Secret clearance.

7. Requests for access to classified materials were denied two members of the Department of State—Dr. G. M. Richardson Dougall and Dr. Edwin S. Costrell—in June 1974 because, although the two individuals had the requisite clearances for the material they wanted to see, that material had not at that time been reviewed for

access by our archivists. For the same reason, access to classified materials was denied to Lt. Col. Bruce Carpenter of 7602nd Air Intelligence Gp, Fort Belvoir, Va., in June 1974.

Access to certain classified materials requested by the U.S. Senate's Select Committee to study Governmental Operations with Respect to Intelligence Activities (the Church Commitee) was granted to a member of the staff of that Committee—Mr. Loch Johnson—in July 1975.

8. Requests for access to restricted materials in this Library have been received from the following Members of Congress:

- Senator William J. Fulbright, Chairman of the Senate Committee on Foreign Relations, June 14, 1972
- Senator Adlai Stevenson III, July 19 and 28, 1972

Copies of the correspondence pertaining to these requests are attached as Exhibits A, B, C, D, and E.

/s/Harry J. Middleton
Harry J. Middleton

Subscribed and Sworn to Before me
this 18th day of July, 1975.

/s/Janie S. Melton
Notary Public

EXHIBIT "A"

United States Senate
Committee on Foreign Relations
Washington, D.C. 20510

June 14, 1972

Mr. Harry Middleton
Director, Lyndon Baines
Johnson Library
Austin, Texas 78712

Dear Mr. Middleton:

As you may know, staff members of the Committee on Foreign Relations are examining American involvement in Indochina. In their studies they are using the documents and analyses of the "Pentagon Papers" as well as other relevant sources.

The Pentagon Papers have proved to be a valuable source of information but unfortunately they contain few documents relating to Vietnam policy in the Johnson Administration. I would appreciate the Library furnishing Committee researchers with documents in the possession of the LBJ Library which relate to this period and which might be useful to their studies. In particular, the Committee researchers would like to have access to the papers analyzing the major military and foreign policy decisions of the Johnson Administration concerning Vietnam and supporting documentation compiled in the Administration's last months.

It has been called to my attention that among other studies, the State Department and White House staff prepared thoroughly documented studies on the 1964 Tonkin Gulf crisis and the Administration's decision to

send large forces to Vietnam. The Committee would appreciate receiving these also.

Since some of these documents and analyses are still sensitive, our staff people, who are cleared for Top Secret work through the Department of Defense, will naturally accord them the respect due sensitive documents.

Sincerely yours,

/s/J. W. Fulbright
J. W. Fulbright
Chairman

EXHIBIT "B"

July 5, 1972

Dear Mr. Chairman:

I am writing in response to your letter of June 14. Your request in this regard is understandable, as are a large number of similar requests which we have received. However, I must give you the same reply I have given to the others, which is that we cannot accede to the request at this time.

The task of organizing, reviewing and making available for research the 31 million papers in the Library's collections is an enormous undertaking. The size of the task required, early in the Library's operation, that we establish a set of priorities for staff work and determine a schedule for opening the documents.

This was similar to the needs that other Presidential Libraries before us had recognized, and our conclusions were consistent with the ones arrived at by those

institutions: We decided to concentrate first on processing and organizing the papers which could be opened most quickly—the papers concerned with domestic policy. This process has begun—we opened our first group of papers, those on Education, earlier this year—and it will continue over the next several years.

As soon as it is practical and feasible, we will move into the area of organizing and readying for review the materials relating to foreign relations. Those materials, however, present problems of substantial complications, because of the classification of many of the documents by different agencies and departments of government; because of their sensitivity; and because of their bearing on present U.S. relations with other countries.

In view of these circumstances, and following the procedures established in other Presidential Libraries, President Johnson, the Archivist of the United States, and I are agreed that even after the task of organizing the foreign policy papers is completed, the Library cannot be the sole determiner of when those papers will be made available. That determination must be made in close consultation with those agencies of government having primary responsiblity for the conduct of the Nation's defense and foreign affairs, and with consideration for the status of our continuing relationships with other countries.

For the foregoing reasons, I am sure you will understand why we are unable to respond in the affirmative to your request. I look forward to the day when ultimately all of the papers in the Library can be made available.

Sincerely yours,

Harry Middleton
Director

Honorable J. W. Fulbright
Chairman
Committee on Foreign Relations
United States Senate
Washington, D.C. 20510

HM:njh

EXHIBIT "C"

United States Senate
Washington, D.C. 20310
July 28, 1972

Mr. Harry Middleton
Director
Lyndon B. Johnson Library
University of Texas
Austin, Texas

Dear Mr. Middleton:

I have been told that the memos by my father and Secretary Rusk which are referred to in my letter of July 19 were received by McGeorge Bundy and have been transferred to your possession at the Library. I have no idea what the ground rules are. If they are classified, perhaps something could be done at this end to release them. Be that as it may, I would be most grateful if you could help. My father's biography is now being edited. His edited writings are also being published. And the absence of his memo leaves a large gap in the historical record. It has been confirmed that the memo never reached President Johnson, so I don't

see how his interests are affected. My concerns are twofold, to preserve the history and my father's place in it.

Ever so many thanks for any help you can give me.

Sincerely,

/s/ Adlai E. Stevenson

ADLAI E. STEVENSON III
ILLINOIS

EXHIBIT "D"

United States Senate
Washington, D.C. 20310
July 19, 1972

Mr. Harry Middleton
Director, Lyndon B. Johnson Library
University of Texas
Austin, Texas

Dear Mr. Middleton:

In the latter part of 1964 and early 1965 my father and Secretary General U Thant were involved in a Vietnam peace initiative. The history of this affair is murky for my father was the only person with complete knowledge of the initiative from both ends—Thant and Washington. Unfortunately, he wrote only a few memos about the affair and these undoubtedly were classified by the government immediately after his death.

Harlan Cleveland states that my father wrote a memo about the peace initiative to the White House on February 17, 1965.

There is also a State Department memo, probably written about the same time, from Secretary Rusk to

McGeorge Bundy outlining, somewhat critically I understand, the State Department's view of this affair.

This initiative is not discussed in the "Pentagon Papers." Efforts to locate these memos and otherwise clear up the historical record have not been successful. I would be most grateful for any help you could give me.

Do you know where I would be able to obtain copies of the Rusk memo and the memo my father sent to the White House? Are you familiar with any other memos or documents written during this time about this initiative? Are there any personal recollections you could share with me about this matter?

Many thanks for any help you can give me.

Sincerely,

/s/ Adlai E. Stevenson

EXHIBIT "E"

August 3, 1972

Dear Senator Stevenson:

In response to your letters of July 19 and July 28, I am afraid I must give you a disappointing reply.

We have received, and I'm sure will continue to receive, a number of requests similar to yours. I think a certain amount of background information on the procedure for organizing and processing the papers on deposit in this Library will be helpful to you in understanding why it is not possible for us to make an affirmative response to these requests.

The task of organizing, reviewing and making available for research the 31 million papers in the Library's

collections is an enormous undertaking. The size of the task required, early in the Library's operation, that we establish a set of priorities for staff work and determine a schedule for opening the documents.

This was similar to the needs that other Presidential Libraries before us had recognized, and our conclusions were consistent with the ones arrived at by those institutions: We decided to concentrate first on processing and organizing the papers which could be opened most quickly—the papers concerned with domestic policy. This process has begun—we opened our first group of papers, those on Education, earlier this year—and it will continue over the next several years.

As soon as it is practical and feasible, we will move into the area of organizing and readying for review the materials relating to foreign relations. Those materials, however, present problems of substantial complications, because of the classification of many of the documents by different agencies and departments of government; because of their sensitivity; and because of their bearing on present U. S. relations with other countries.

In view of these circumstances, and following the procedures established in other Presidential Libraries, even after the task of organizing the foreign policy papers is completed, the Library itself cannot be the sole determiner of when those papers will be made available. That determination must be made in close consultation with those agencies of government having primary responsibility for the conduct of the Nation's defense and foreign affairs, and with consideration for the status of our continuing relationships with other countries.

At that time, the papers that are opened for review will be made available to all qualified researchers. Regulations established by The National Archives, following the dictates of the Freedom of Information Act, forbid our making certain papers available to individuals on a selective basis.

I hope that the foregoing reasons will give you a clearer understanding of why we are unable to respond in the affirmative to your request. This answer comes to you with my personal regrets, and my best wishes.

Sincerely yours,

/s/Harry Middleton
Director

Honorable Adlai E. Stevenson III
United States Senate
Washington, D.C. 20510

HM:jh

[Caption Omitted in Printing]

AFFIDAVIT OF WILLIAM R. EMERSON

1. I, William R. Emerson, am presently the Director of the Franklin D. Roosevelt Library (hereinafter referred to as "the Library"), National Archives and Records Service, General Services Administration, located in Hyde Park, New York. I have held this position since I was appointed to it on July 1, 1974, this being my first formal connection with the Roosevelt Library or the National Archives and Records Service.

2. In the course of discharging my official duties, I have obtained personal knowledge of the contents of the Library and its use by government officials, journalists,

historians, and other researchers. I have also caused the administrative files of the Library to be searched to determine such use.

3. The Roosevelt Library was built in 1939-1940, after President Roosevelt determined that all his papers, materials, and artifacts were to be contained in a special library on the grounds of his estate at Hyde Park, New York.

4. Although some of President Roosevelt's White House papers werre stored in the Library to relieve pressure on storage space during his third and fourth terms, the bulk of his White House papers were physically transferred to the Library after his death in 1945.

5. The major notable exception to this transfer was the so-called "Map Room" papers to be discussed below.

6. The Library contains approximately twenty-one (21) million pages of documentation in over one hundred seventy (170) collections. Approximately ten and one-half (10.5) million of these constitute the papers arising directly from Mr. Roosevelt's service as President of the United States.

7. Processing of the Roosevelt materials began in 1947 after legal technicalities connected with President Roosevelt's will were resolved.

8. By 1950, 85 percent of these materials had been opened to researchers. Today, less than one (1) percent of the papers are closed to research.

9. There are two types of restricted materials among the papers of President Roosevelt. One category comprises security-classified documents which are restricted under the authority of the various Executive Orders bearing on such matters. The second type comprises donor-restricted documents which, for varying periods of

time, are closed in accordance with the instructions of donors or their agents.

10. Security classified documents in the Library were received here in that status. Acting upon written instructions provided from time to time by the several Federal agencies (including the Department of Defense, the Department of State and the Joint Chiefs of Staff, among others) the Library has declassified the great bulk of these documents.

11. With regard to the matter of donor-restricted documents within the papers presented to the Library, the Library's archivists were guided by two documents: the "Memorandum for the Director of the Franklin D. Roosevelt Library" from President Roosevelt dated July 16, 1943, (a true and accurate copy of which is attached hereto as Exhibit A) and a letter to Dr. Wayne Grover, Archivist of the United States from the Honorable Samuel I. Rosenman and Grace G. Tully dated November 17, 1949, (a true and accurate copy of which is attached hereto as Exhibit B). Operating under the guidance set forth in these two documents, the Library's archives staff made a detailed examination of the said materials to determine which could be opened for research and which should remain closed for the time being.

12. In carrying out this examination, the archives staff necessarily had full and unrestricted access to this material, including the most personal and private letters and papers of President Roosevelt, his staff and his family, as a prerequisite to making the necessary determinations as to the proper access to be granted to such materials. This is the basic function of the professional archivist and the Library's archives staff conducted the processing of the Roosevelt material, both official and private, with a full sense of discretion and a

deep respect for the privacy and confidentiality of the material in its custody. I have no knowledge or indication of any improper disclosure of any information contained in security-classified or donor-restricted documents arising from the access given to the Library archives staff in this connection.

13. I have caused my staff to search the administrative files of the Library relating to access to the Roosevelt materials over the last thirty (30) years. I have attached hereto true and accurate copies of records in our administrative files which provide information about access to the Roosevelt materials given to government officials, representatives of the media, students, academicians, and other researchers. Our records indicate the following on research use of this Library as of June 30, 1975.

Number of research passes issued (valid for one year)	5,009
Number of research visits (1946-1975)	22,045
Breakdown on researchers:	
Government employees on official business (These people have personally visited Hyde Park to examine the Roosevelt presidential papers in connection with official research programs. This list includes representatives from Army, Navy, Defense, State, Atomic Energy Commission, Joint Chiefs of Staff, Central Intelligence Agency and National Security Agency.)	42
Officials of municipal, state and local governments	23
Officials of foreign governments	10
Representatives of the media (journalists, filmmakers, etc.)	147

The remainder of our researchers include professors, graduate and undergraduate students, free-lance writers, genealogists, and other researchers.

14. Exhibit C, attached hereto, are true and accurate copies of a series of documents in our files relating to arrangements made by President Truman to retain control for a period of time during his administration of certain of President Roosevelt's war-time materials, the so-called "Map Room Papers," and to eventually turn them over to the custody of the Library.

15. Exhibits D, E, F and G, attached hereto, are true and correct copies of documents in our files relating to White House requests for material in the Roosevelt Library. Exhibit D shows the Library responding to White House requests for material on President Roosevelt's war-time communications with Generalissimo Chiang Kai-Shek. Exhibit E reveals the Library's response to a White House request concerning materials relating to the declaration of martial law in Hawaii in 1941. Exhibits F and G, respectively, indicate responses to White House requests for material on the manner in which Cabinet meetings were conducted and confidential material dating from 1933, and restricted as to access, which was needed in connection with a lawsuit in 1953.

16. Exhibits H and I, attached hereto, are true and accurate copies of documents indicating the Library's extensive relations with the Department of State and the Department of the Army in connection with their scholarly publications program—*Foreign Relations of the United States* and *The U. S. Army in World War II.*

17. Exhibits J through S are also true and accurate copies of documents in Library files. Exhibit J is a letter of introduction by the Joint Chiefs of Staff given to a Dutch naval officer engaged in historical research. Exhibit

K shows the Library providing documentation to the Department of Justice bearing on a suit at law. Exhibit L is a request from a CIA official for information about a collection which had only recently come into the Library's possession. Exhibit M involves an inquiry by an official of the National Security Agency about a possible intervention by Prime Minister Churchill in matters bearing on cryptographic security during World War II. Exhibits N through Q show the Library responding to requests by the Atomic Energy Commission, the Air Force, the Civil Service Commission and the Secret Service for documentation of various kinds. Exhibit R involves a personal request by a Senator, Mr. McKellar, and Exhibit S an official request by another Senator, Mr. Eastland, for information on an official of the Roosevelt Administration whose activities were then under investigation by a Senate Committee.

18. Exhibit T includes several documents, which are true and accurate copies of records in Library files, which are samples of hundreds of requests in our files from government officials for various materials in the Roosevelt Library.

19. Exhibit U includes several documents, which are true and accurate copies of records in Library files, which are samples of approximately fifty (50) applications for admission to search rooms in the Library by government officials on official business.

/s/William R. Emerson
WILLIAM R. EMERSON

Sworn and subscribed to
before me this 22nd day of July, 1975

/s/F. James Devine
Notary Public
My Commission expires: March 30, 1977
[SEAL]

EXHIBIT A

The White House
Washington

July 16, 1943

MEMORANDUM FOR

THE DIRECTOR OF THE FRANKLIN D. ROOSEVELT LIBRARY

1. Before any of my personal or confidential files are transferred to the Library at Hyde Park, I wish to go through them and select those which are never to be made public; those which should be sealed for a prescribed period of time before they are made public; and those which are strictly family matters, to be retained by my family. If by reason of death or incapacity I am unable to do this, I wish that function to be performed by a Committee of Three, namely, Samuel I. Rosenman, Harry L. Hopkins and Grace G. Tully, or the survivors thereof.

2. With respect to the file known as "Famous People's File", the same procedure should be followed. Those which are official letters may be turned over to the Library, but those which are in effect personal such as, for example, the longhand letters between the King of England and myself, or between Cardinal Mundelein and myself, are to be retained by me or my Estate and should never be made public. There are many such examples and

this Committee will do the selecting in the event that I am unable to do so for the above mentioned reasons.

3. With respect to the file called "Family Letters", in the main they are to be retained by me or my Estate. However, the Committee should have the discretion of selecting a few which in their judgment could be given to the Library and made public

4. In all of the papers which are to be turned over to the Library from my personal files or from nonpersonal, official files, there will be some which should not be published until a lapse of a certain length of time and which, in the meantime, should be put under seal. This is for the reason that they may refer to people who are still alive in a way which would be embarrassing to them. The aforesaid Committee of Three should determine which letters should be so sealed and the length of time of sealing. I should judge that the average length of time of sealing should be from ten to fifteen years, but there may be some which sould be sealed for as many as fifty years.

/s/Franklin D. Roosevelt

EXHIBIT "B"

November 17, 1949

Dear Dr. Grover:

The undersigned are the surviving members of a Committee designated by President Franklin D. Roosevelt in a memorandum signed by him on July 16, 1943, to go through his papers and to select those that should be sealed for a period of time before being made public.

This was a task which, according to the memorandum, he was himself to have performed, if he had lived.

Since it was obviously impossible for us personally to examine the four or five million papers now in the Franklin D. Roosevelt Library at Hyde Park, it was arranged for you and your staff to segregate the papers in accordance with certain standards which we had agreed upon. We understand that these standards are the ones now generally used in relation to government records.

Following are the categories of papers to be restricted for the time being:

1. Investigative reports on individuals.

2. Applications and recommendations for positions.

3. Documents containing derogatory remarks concerning the character, loyalty, integrity, or ability of individuals.

4. Documents containing information concerning personal for family affairs of individuals.

5. Documents containing information of a type that could be used in the harassment of living persons or the relatives of recently deceased persons.

6. Documents containing information the release of which would be prejudicial to national security.

7. Documents containing information the release of which would be prejudicial to the maintenance of friendly relations with foreign nations.

You and we have agreed that there should temporarily be excluded communications addressed to the President in confidence, the publication of which at this time, so soon after the President's death and termination of office, might result in discouraging confidential communications to Presidents in the future. A majority of such communica-

tions would, of course, also be included in one or more of the foregoing seven categories.

We have gone over the preliminary segregation that you and your staff have made, and have made several revisions with which you have expressed accord.

We are glad to learn that as a result of this process, you will be in a position by March 17, 1950 to open for research use about 85 percent of the total volume of the Roosevelt papers now in the Library covering the period 1910-1945.

The restricted papers should be re-examined periodically, and opened as soon as the passage of time has removed them from the categories enumerated above. In our opinion there will be comparatively few papers which will have to remain restricted for a period longer than twenty-five years from the date of President Roosevelt's death.

Very sincerely yours,

/s/Samuel I. Rosenman
/s/Grace G. Tully

Dr. Wayne G. Grover
Archivist of the United States
National Archives

[Caption Omitted in Printing]

AFFIDAVIT OF WILLIAM R. EMERSON
DIRECTOR OF THE FRANKLIN D. ROOSEVELT LIBRARY

CITY OF HYDE PARK)
) ss:
STATE OF NEW YORK)

WILLIAM R. EMERSON, being first duly sworn, deposes and says:

1. I am Director of the Franklin D. Roosevelt Library ("the Library"), which is part of the National Archives and Records Service ("NARS") in the General Services Administration. I was appointed to this position in July 1974.

2. The collection housed in the Library includes the Presidential materials of President Roosevelt, as well as approximately 170 other collections of associates of the President, including, for example, his Secretary, Steven T. Early, his wife Eleanor, and his advisers, such as Harry Hopkins and Adolf A. Berle, Jr. It contains in all more than twenty-one million documents.

3. In committing the Presidential materials to the Library, President Roosevelt specified seven categories of materials for special treatment within the collection and created a Committee of three individuals—Samuel Rosenman, Harry Hopkins, and Grace Tully—to oversee the implementation of such treatment. The restrictions included limitations on access to private and personal materials, among other things. The Committee delegated to the Director of the Library the duty of reviewing all materials within the collection to determine which materials fell within the seven categories and should be restricted and which on due consideration should be

opened. I inherited that duty in July 1974 when I became Director of the Library and I discharge it today.

4. In carrying out this duty, I or my staff peruse the papers, and I then decide whether access to a particular paper should still be restricted as private or personal (or subject to another restriction) on a case-by-case basis, arriving at decisions on my own authority but in consultation with the other archivists on my staff. In this manner, the entire collection of the Library has been reviewed and categorized. The staff continually reviews portions of the collection closed to researchers to determine whether the passage of time would justify opening them, consistent with the applicable restrictions. At this time less than one-half of one percent of the materials are still restricted on the grounds that they are private or personal materials or otherwise subject to Mr. Roosevelt's restrictions.

5. When we receive a request for access to any of these remaining restricted materials, an archivist on my staff or I will review each document requested to determine whether it is private or personal and thereby not subject to disclosure.

6. In order to review security-classified material, two members of my staff of archivists, and myself, have secured top secret security clearances. We have not required higher security status. In no instance has our security status precluded our reviewing material.

7. I have been Director of the Library since July 1974. I was selected by Arthur Sampson, Administrator of General Services, on the advice of James B. Rhoads, the Archivist of the United States, under applicable Civil Service procedures. My job here—and that of the other archivists—is that of a professional. The archivists who comprise the Library's staff have each completed courses in professional

training in archival practices and in most cases hold advanced academ ic degrees. As part of normal archival duties, archivists routinely read or review papers and materials that are private or personal, security classified or restricted in other ways. As professionals, archivists are imbued through training, and an understanding of their legal obligations, with an absolute commitment to discretion and integrity in the performance of their duties. No objections have ever been registered by members of the late President Roosevelt's family regarding the handling of materials in the collection by the Library staff. Nor is there to my knowledge any evidence or indication of any improper disclosure of any information contained in security-classified or donor-restricted documents arising from the access given to the Library's archives staff in connection with its work upon them.

/s/William R. Emerson
William R. Emerson

Subscribed and Sworn to Before me
this 23rd day of July, 1975.

/s/Oliver S. Gring #6602100
Notary Public
Commission expires May 30, 1976

[Copy Omitted in Printing]

AFFIDAVIT OF JEANNE W. DAVIS

1. I, Jeanne W. Davis, am the Staff Secretary of the National Security Council (hereinafter "NSC"). I have held this position since June, 1970. My responsibilities include the review of the work of NSC Staff members for general responsiveness to the requirements of the

President and his Assistant for National Security Affairs, including organization, presentation, format and proper coordination. I also serve as the principal point of contact on NSC matters for the Offices of the NSC members and other Executive Departments. My office circulates paper for meetings of the NSC and its sub-groups, records the actions of the NSC and the decisions of the President on national security policy questions and helps insure that the officials concerned are informed of the workings of the NSC and the decisions of the President. I have overall responsibility for the assignment of action on the staff, the control and information documents to the President or Mr. Kissinger and the maintenance of the official NSC files.

2. The statutory function of the NSC is to advise the President with respect to the integration of domestic, foreign and military policies relating to the national security. (Pub.L. 253, Title I, Section 101, 80th Congress, approved July 26, 1947, as amended by Section 307 Pub.L 165, 82nd Congress, approved October 10, 1951. By reorganization Plan No. 4, effective August 20, 1949, the Council was placed in the Executive Office of the President, 50 U.S.C. 402.) Subject to the direction of the President, it is the responsibility of the NSC to assess and appraise the objectives, commitments and risks of the United States in relation to actual and potential military power, to consider policy on matters of common interest to the departments and agencies of the government, and to make such recommendations and such other reports to the President as it deems appropriate or as the President may require. As an advisory body to the President, the NSC's organization has been shaped to meet needs of individual Presidents and to be compatible with their methods of work. At the present time, the NSC is the principal forum through

which major issues of national security policy are identified, analyzed and brought to the President for decision. The NSC itself is not a decision-making body.

3. In 1953, which President Eisenhower appointed Mr. Robert Cutler as his Special Assistant for Security Affairs, he announced that this official would also be the principal Executive Officer of the NSC. This practice has been continued by each succeeding President. During the administrations of Presidents Johnson and Kennedy, much of the formal structure of the NSC was not used and the NSC in essence became an extension of the White House staff. In 1969 President Nixon revitalized the machinery of the NSC and President Ford has affirmed a commitment to maintain the NSC as the formal structure for foreign policy decision making. Under Presidents Nixon and Ford, the Assistant for National Security Affairs (Mr. Kissinger) has served in both the role of chief supervisory officer of the NSC system and the role of Advisor to the President. The NSC staff members have supported Mr. Kissinger, as Assistant to the President, in both capacities.

4. Material generated by the NSC is separated into two types of files. The first we refer to as "institutional files" and the second as non-institutional files.

5. The institutional files of the NSC contain all National Security Study Memoranda and Decision Memoranda and all reports and recommendations prepared for the Council. These files also include minutes of NSC and sub-group meetings, briefing papers, and material related to NSC organizations. The current files are maintained in my office or by the Secretariat in an alarmed vault in NSC offices in the OEOB. Older institutional files are stored in classified depositories outside Washington, D.C. In addition, the NSC staff files contain other records, such as correspondence concerning Freedom of Informa-

tion requests and NSC staff correspondence with the public. The NSC administrative files contain primarily personnel records. As files of a statutory body, the NSC institutional files serve to preserve continuity in the decision-making process in the area of national security. These files have always been retained by NSC from Administration to Administration and these are available to subsequent Presidents for these purposes.

6. Non-institutional files are also maintained by the NSC staff. They include the following types of records; briefing material for presidential meetings, records of negotiations with foreign governments, correspondence with foreign heads of state and government, correspondence—including presidential directives—with agencies in the Executive Branch on matters concerning foreign affairs but not considered part of the NSC institutional process, and various other types of classified correspondence on matters of foreign policy interest. The information contained in these files is staffed and prepared in NSC staff offices and is processed through the NSC Secretariat. When an action is completed, the NSC Secretariat forwards the set of papers involved to a secure document receiving area, operated by NSC Staff in the White House (neither in Central Files nor Special Files). There the records are maintained for access by the President, the Assistant to the President for National Security Affairs and his staff. These files, although maintained and accessable to NSC staff personnel, are considered by NSC to be presidential files and have in the past been boxed and removed by presidents when an administration changes.

7. Other non-institutional files includes materials which relate to foreign affairs, but which are filed in White House Central Files. These files are also processed for the President through and by the NSC Staff. These

files include official presidential documents, congressional and public correspondence, legislative documents, speech material, and unclassified, non-substantive records. These are maintained by White House personnel on the ground floor of the Old Executive Office Building and are treated by a departing president the same as other presidential materials. Such documents have been available in the White House for NSC reference purposes during the life span of a particular administration, and afterwards, at the appropriate presidential library.

8. These non-institutional files are not available in the White House to succeeding presidents because past presidents have customarily removed such presidential materials as they have departed from office. Succeeding presidents, their staffs and NSC staff acting on their behalf, are able to have access to these foreign policy documents of previous administrations through the various presidential libraries which have been established after the president has left office. During President Nixon's term, as in other administrations, the NSC staff had occasion to use the non-institutional foreign policy documents of previous administrations.

9. In general, there is no overlap between the NSC files and the White House files maintained by NSC staff personnel. The only exception concerns NSC institutional documents which, in addition to being maintained in the NSC files, are also included in Presidential files stored in the White House. Copies of non-institutional documents are not maintained by the NSC as permanent records.

10. In carrying out current Government business it has been necessary to review certain papers of the Nixon Administration which are maintained in the vault in room 207 of the Old Executive Office Building. These papers have included records of negotiations and Presidential

and other high-level correspondence with foreign officials. Some specific illustrations of the on-going need for Nixon Administration material follow.

11. President Ford will be traveling in the near future to the People's Republic of China. In preparation for this meeting with leaders of the People's Republic, the President will need to be briefed on the negotiations with these leaders conducted by President Nixon during his visit there in 1972 and by Mr. Kissinger, his Assistant for National Security Affairs, which took place both before and after Mr. Nixon's visit. The basis for much of our China policy is contained in the papers of the Nixon Administration which are non-institutional and therefore not part of the permanent institutional records retained by the NSC. Without the ability to review our past understandings with the Chinese, as reflected in these documents, the President would be inadequately prepared for his forthcoming meetings with the PRC officials.

12. The United States has continued its efforts with the parties to the Arab-Israeli dispute in an attempt to resolve outstanding differences and bring about a lasting peace in the Middle East. The negotiating positions of all parties have substantially changed many times. It is essential that we be able to review the records in order to trace the development of a particular negotiating position if we are to play a mediating role. Without ready access to the Nixon administration material, of which the basic negotiating papers are a part, our effectiveness would be seriously diminished.

13. Until recently we had frequent occasion to review material relating to Vietnam, in particular the negotiations which led to the 1973 Paris Peace Agreement. In addition, Congressional and media inquiries as to commitments which may have been contained in

exchanges between Presidents Nixon and Thieu required a thorough review of this material to determine the actual facts. Without ready access to these papers the response would have been based only on recollections and the assurances of others and could not be adequately supported with written documents.

14. Our on-going Strategic Arms Limitations Talks (SALT) with the Soviet Union began during the early years of the Nixon Administration. Many different positions have been discussed and various agreements have been signed. We simply could not continue these most significant negotiations without access to an official record of previous agreements and negotiating positions.

15. It would, of course, be possible to continue to operate without access to the material filed in room 207, OEOB, if we could keep working copies of the documents. Indeed, we have retained copies of a limited number of those documents most often required in the White House office of the Assistant to the President. We have, however, kept this practice to a minimum and are not in a position to anticipate future needs with regard to access to the Nixon material.

16. In addition to reviewing these papers for the purposes of on-going Government business, we have also been required to review the original documents to determine whether they are properly classified and properly marked with the classification and exemption categories, pursuant to Executive Order 11652. When we have discovered documents which are not correctly classified or marked, we have added the requisite information so that the documents will conform to the appropriate classification requirements. This has been done to assist the future custodians of these documents who will be called upon to respond to requests for the declassification and release of these records.

/s/Jeanne W. Davis
JEANNE W. DAVIS

Subscribed and sworn before me
this 25th day of July, 1975.

/s/Albert E. Brown
Notary Public

My Commission expires: May 31, 1978

[Caption Omitted in Printing]

AFFIDAVIT OF JOHN STEWART

1. I, John Stewart, am the Assistant Director for Archives of the Kennedy Library, Waltham, Massachusetts. I served as Acting Director of the Kennedy Library from November 1968 to November 1971 and since that time have been Assistant Director.

2. In September, 1969, the Kennedy Library was established as a formal organizational unit of the National Archives and Records Service. Although there had been some archival processing of these materials prior to that time, substantial archival processing and opening of segments of the materials began on that date. Today, approximately 85 percent of the total volume of the papers of President Kennedy have been processed.

3. The White House files of President Kennedy came into the custody of the National Archives and Records Service in a variety of ways. The voluminous Central Files were shipped from the White House to the National Archives building in February 1964; the files of McGeorge Bundy, Special Assistant to the President for National Security Affairs were shipped from the White

House in August 1965; and the files maintained by the President's personal secretary, Mrs. Evelyn Lincoln were transferred October 1965.

4. In my positions as Acting and Assistant Director, I have acquired personal knowledge of the procedures of the library as they pertain to those seeking access to materials, both open and closed.

5. I have caused to be searched a number of the files of the Library to ascertain those who have sought and been allowed access to the Library's presidential materials.

6. There have since 1965, been a number of requests by officials of the federal government for access to materials in the Kennedy Library of both a security classified and non-security classified nature. Among these are the following:

(a) There are twelve (12) staff members of the Church Committee on CIA activities currently doing research in the library.

(b) During 1973, an official of the National Park Service did a study of the funding of the National Cultural Arts Center (Kennedy Center).

(c) In 1973, an officer of the Office of Chief of Military History of the Department of the Army did a study in the Kennedy Library on the integration of the armed forces.

(d) Early in 1975, two researchers from the Naval Historical Center did a study on the Bay of Pigs incident.

(e) An official of the Office of the Secretary of Defense has done a study of classified materials on Soviet and American strategic weapons development.

(f) An official of the National Aeronautics and Space Administration has done studies in classified materials on the history of the National Aeronautics and Space Administration from 1957 to 1961.

(g) An official of the Central Intelligence Agency has reviewed documents related to Cuban activities.

(h) A Department of Defense funded institute has also conducted research on the Apollo Space program.

7. I know of no situation in which a request for access to closed materials was made by anyone to officials of the National Archives and Records Service and then denied by the Donors' Committee, the group representing the Kennedy family on matters of access to the papers.

8. The Donors' Committee has delegated to the Library staff the authority to remove restrictions and open material closed in the course of the initial review, and materials which had been classified and then declassified.

9. In carrying out the archival processing of the materials in the Kennedy Library, the staff of the Library had full and unrestricted access to many of the personal and private documents of President Kennedy and his family, including, for example, some financial records. It was necessary that we carefully examine these materials to make an initial determination regarding public access. We approached this work with full respect for the privacy of these documents and I know of no improper disclosure of security classified or donor-restricted documents because of the access to and processing of these materials by the Library staff.

/s/John Stewart
JOHN STEWART

Subscribed and sworn to before this 28th day of July, 1975.

/s/J. Richard Quinlan
Notary Public

My Commission expires: 12/15/78

[Caption Omitted in Printing]

AFFIDAVIT OF DANIEL J. REED

1. I, Daniel J. Reed, am Assistant Archivist, Office of Presidential Libraries, National Archives and Records Service, General Services Administration. I have held this position since August 12, 1968. In the course of my official duties, I have gained personal knowledge of the operations and general procedures of the presidential libraries of Herbert Hoover, Franklin D. Roosevelt, Harry S. Truman, Dwight D. Eisenhower, John F. Kennedy, and Lyndon B. Johnson.

2. By joint resolution of Congress, S.J. Res. 118, H.J. Res. 268, approved July 18, 1939, the Franklin D. Roosevelt Library was established.

3. In accordance with the provisions of the Presidential Library Act of 1955 (P.L. 84-373, 44 U.S.C. 2107-08 (1970)), presidential libraries for Presidents Hoover, Truman, Eisenhower, Kennedy, and Johnson have subsequently been established.

4. The Herbert Hoover Presidential Library in West Branch, Iowa, includes approximately 1,000,000 pages of documents arising from Mr. Hoover's service as President.

5. The Franklin D. Roosevelt Library in Hyde Park, New York, includes approximately 10,500,000 pages of

documents arising from Mr. Roosevelt's service as President.

6. The Harry S. Truman Library in Independence, Missouri, contains approximately 5,800,000 pages of documents arising from Mr. Truman's service as President.

7. The Dwight D. Eisenhower Library in Abilene, Kansas, contains approximately 11,000,000 pages of documents arising from Mr. Eisenhower's service as President.

8. The John F. Kennedy Library, currently located in the Federal Archives and Records Center in Waltham, Massachusetts, contains approximately 13,000,000 pages of documents arising from Mr. Kennedy's service as President.

9. The Lyndon B. Johnson Library in Austin, Texas, contains approximately 17,000,000 pages of documents arising from Mr. Johnson's service as President.

10. The archivists at these presidential libraries solicit, arrange, describe, and make available to the public the materials in the presidential libraries.

11. In the course of arranging and describing presidential historical materials at these libraries, the archivists routinely review materials of the President, his staff, and his family and make determinations concerning access to them. Such documents in many instances include those of a personal or private nature, such as medical letters or personal diaries. Library archivists likewise review security classified documents on a regular basis. The archivists, because of their professional experience and training, are skilled in reviewing and segregating such materials.

12. In the course of my supervision of these libraries, I am aware that various federal agencies have sought access to materials in presidential libraries for ongoing governmental purposes. White House officials have made use of some presidential libraries for foreign affairs and national security purposes. Examples of government agencies that have sought access to materials in presidential libraries are the Department of State, the Department of Defense, the Department of the Interior (National Park Service), the Central Intelligence Agency, and the U.S. Energy Research and Development Administration (formerly Atomic Energy Commission). In addition, the Department of State and the various departments of the military have made use of the presidential libraries to develop historical studies for the agency's use.

13. In the course of my supervision of these libraries, I am aware of requests for access by committees of the Congress to materials in presidential libraries. Two examples of such requests are the Senate Committee on the Judiciary, Subcommittee to Investigate the Administration of the Internal Security Act and other Internal Security Laws under S.Res. 366 (81st Congress); and the Senate Select Committee to Study Governmental Operations with Respect to Intelligence Activities. These requests have been honored.

14. Many private researchers seek to inspect confidential or security classified documents in presidential libraries. When such private researchers seek access to classified materials, the presidential libraries handle their requests for mandatory review and declassification of such documents in accordance with the provisions of Executive Order No. 11652, ___ F.R. ___ ( ). A copy of which is attached hereto as Exhibit A.

15. In deeds dated December 30, 1968, and March 27, 1969, Richard Nixon entered into agreements with

the General Services Administration providing for the arrangement and description of certain of his pre-presidential materials by archivists employed by the National Archives. (Copies of deeds attached as Exhibits B and C).

16. Attached hereto as Exhibit D is a true and accurate copy of the "Study of Presidential Units and Their Records," a document prepared by the staff of the National Archives and Records Service in the course of their official duties.

/s/Daniel J. Reed
DANIEL J. REED

Subscribed and sworn to before this 25th day of July, 1975.

/s/Francis J. Heppner
Notary Public
My Commission expires: August 31, 1979

EXHIBIT B

CHATTEL DEED
from
RICHARD M. NIXON
to
THE UNITED STATES OF AMERICA

Dated: December 30, 1968

The undersigned, Richard M. Nixon, does hereby give, assign, transfer, set over and deliver unto The United States of America all of his right, title and interest in and to the papers, manuscripts and other materials (herein-

after collectively referred to as "the Materials") which are listed and described in Schedule A annexed hereto and hereby made a part hereof, to have and to hold the same to The United States of America forever.

This conveyance is made to The United States of America without any reservation to the undersigned, Richard M. Nixon, of any intervening interest or any right to the actual possession of the said Materials, it being understood that the delivery of this Chattel Deed to the General Services Administrator shall convey to The United States of America the right and power immediately to take possession of the said Materials and to hold, use and dispose of the same, subject only to the following commitments made on behalf of The United States of America by the General Services Administrator:

1. The undersigned shall have the right of access to any and all of the Materials and the right to copy or to have copied any and all of the Materials by any means of his selection, and to take and retain possession of any or all such copies for any purpose whatsoever. During such time as the undersigned shall hold the office of President of the United States, no person or persons shall have the right of access to such Materials except the undersigned and those who may be designated in writing by the undersigned, and in the case of any person or persons so designated, such right of access shall be limited to those Materials as shall be described in the instrument by which he, she, it or they shall be designated, and for the purposes specified in such instrument; and, if such instrument shall so provide, the person or persons designated therein shall have the further right to copy such of the Materials as shall be described in such instrument and to take and retain possession of such copies for such purposes as shall be specified in said instrument. The undersigned shall

have the right and power at any time during his lifetime to modify or remove this restriction as to any or all of the Materials and/or to grant access to any group or groups of persons by notification in writing to the General Services Administration or other appropriate agency of The United States of America.

2. If a Presidential archival depository shall be established for the housing and preservation of the Materials pertaining to the career of the undersigned in public service, then, as soon as practicable after the establishment of such depository, the Materials shall be transferred to and thereafter housed and preserved at such Presidential archival depository. Until the establishment of such a depository, the Materials shall be housed and preserved at a place to be selected by the General Services Administrator or other appropriate agency of The United States of America.

3. None of the foregoing restrictions is intended to prevent the Materials from being used exclusively for public purposes, and in no event shall any of the said restrictions be so construed.

4. Notwithstanding the foregoing restrictions, employees specifically designated by the archivist of the National Archives and Records Service shall, in the course of performance of their necessary archival duties, have such access to the said Materials as shall be necessary for normal archival processing activities.

By the signature of his duly authorized agent below, the General Services Administrator accepts this conveyance for and on behalf of The United States of America, and confirms the commitments made by his office on behalf of The United States of America, as set forth above.

This instrument is executed in duplicate, each of which is an original, but both of which taken together shall be deemed one and the same instrument.

Dated: [Illegible]

/s/Richard M. Nixon
Richard M. Nixon

GENERAL SERVICES ADMINISTRATION
By /s/[Illegible]

SCHEDULE A ANNEXED TO AND PART OF CHATTEL DEED FROM RICHARD M. NIXON TO THE UNITED STATES OF AMERICA DATED DECEMBER 30, 1968

The materials conveyed by the Chattel Deed of which this Schedule is a part are located in packing cases identified by roman numbers I through XXI. The column at the left identifies each packing case by reference to its number, the center column describes the materials contained in such case in general terms and the column to the right shows the approximate number of items contained in such case.

I	Children's Letters	)
		)
II	" "	) 9,000 items
		)
III	" "	)
IV	82nd Congress	2,500 items
V	Campaign of 1964	3,000 items
VI	1965 Appearances, Trips	3,000 items

VII	Plaques and Key (5) Whittier Year Book 1966 8 Tapes	13 items
VIII	Far East Trip	3,000 items
IX	1960 Campaign	3,000 items
X	1959 Speech Files (Correspondence and copies)	3,000 items
XI	1964 Campaign Tapes in Chronological Order	24 items
XII	Plaques, Key, Picture	10 items
XIII	1960 Campaign Clippings	1,000 items
XIV	*Six Crises* Manuscript	2,000 items
XV	1959 Appearances, Trips	1,250 items
XVI	1953 Trip—Far East Letters, Notes	2,000 items
XVII	1955 Central American Trip	3,000 items
XVIII	1956 Trip—Philippines, Pakistan, etc.	3,000 items
XIX	1964 Correspondence Prior to Republican Convention Young People's Correspondence Book on 1964 Convention	1,250 items
XX	1954 Itineraries, Appearances Foreign Dignitaries (met by RMN)	1,250 items
XXI	1964 Campaign Notes (plus 2 Books and Framed Plaque)	3 items

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EXHIBIT C

CHATTEL DEED
from
RICHARD M. NIXON
to
THE UNITED STATES OF AMERICA

Dated: March 27, 1969

The undersigned, Richard M. Nixon, does hereby give, assign, transfer, set over and deliver unto The United States of America all of his right, title and interest in and to the papers, manuscripts and other materials (hereinafter collectively referred to as "the Materials") which are listed and described in Schedule A annexed hereto and hereby made a part hereof, to have and to hold the same to The United States of America forever.

This conveyance is made to The United States of America without any reservation to the undersigned, Richard M. Nixon, of any intervening interest or any right to the actual possession of the said Materials, it being understood that the delivery of this Chattel Deed to the General Services Administrator shall convey to The United States of America the right and power immediately to take possession of the said Materials and to hold, use and dispose of the same, provided, however:

1. The undersigned shall have the right of access to any and all of the Materials and the right to copy or to have copied any and all of the Materials by any means of his selection, and to take and retain possession of any or all such copies for any purpose whatsoever. During such time as the undersigned shall hold the office of President of the United States, no person or persons shall have the right of access to such Materials except the undersigned and those who may be

designated in writing by the undersigned, and in the case of any person or persons so designated, such right of access shall be limited to those Materials as shall be described in the instrument by which he, she, it or they shall be designated, and for the purposes specified in such instrument; and, if such instrument shall so provide, the person or persons designated therein shall have the further right to copy such of the Materials as shall be described in such instrument and to take and retain possession of such copies for such purposes as shall be specified in said instrument. The undersigned shall have the right and power at any time during his lifetime to modify or remove this restriction as to any or all of the Materials and/or to grant access to any group or groups of persons by notification in writing to the General Services Administration or other appropriate agency of The United States of America.

2. If a Presidential archival depository shall be established for the housing and preservation of the Materials pertaining to the career of the undersigned in public service, then, as soon as practicable after the establishment of such depository, the Materials shall be transferred to and thereafter be housed and preserved at such Presidential archival depository. Until the establishment of such a depository, the Materials shall be housed and preserved at a place to be selected by the General Services Administrator or other appropriate agency of The United States of America.

3. Notwithstanding the foregoing restrictions, employees specifically designated by the archivist of the National Archives and Records Service shall, in the course of performance of their necessary archival duties, have such access to the said Materials as shall be necessary for normal archival processing activities.

4. None of the foregoing restrictions is intended to prevent the Materials from being used exclusively for public purposes, and in no event shall any of the said restrictions be so construed, nor are they intended to vest in the undersigned any ownership or title thereto.

This instrument may be executed in duplicate, or triplicate, each of which shall be deemed an original.

Dated: March 27, 1969.

RICHARD M. NIXON
PRESIDENT OF THE UNITED STATES
OF AMERICA

By /s/Edward L. Morgan
Deputy Counsel to the President

SCHEDULE A ANNEXED TO AND PART OF CHATTEL DEED FROM RICHARD MILHOUS NIXON TO THE UNITED STATES OF AMERICA, DATED MARCH 27, 1969

The materials conveyed by the Chattel Deed of which this Schedule A is a part, herewith deposited and housed in the National Archives Building, Washington, D.C., constituting six hundred thousand individual items contained within 1,176 file boxes, are more particularly described as follows:

I. GENERAL CORRESPONDENCE AS VICE PRESIDENT

Boxes "AANDAHL through ZWIENG"

Boxes 18 through 845, inclusive — 828 Boxes

II.	APPEARANCE FILE 1948-1962 Boxes 1 through 173	173 Boxes
III.	CORRESPONDENCE RE INVITATIONS 1954-1961	56 Boxes
IV.	FOREIGN TRIP FILES AS VICE PRESIDENT	116 Boxes
V.	VISIT OF KHRUSHCHEV TO UNITED STATES	3 Boxes
	Total:	1,176 Boxes

EXHIBIT H

[SEAL]

Comptroller General of the United States
Washington, D. C.

B-149372 September 20, 1974

The Honorable Joseph M. Montoya, Chairman
Subcommittee on Treasury, Postal Service
and General Government
Committee on Appropriations
United States Senate

Dear Mr. Chairman:

This refers to your letter of September 12, 1974, wherein you request our views on certain questions arising in connection with the Subcommittee's consideration of two proposed appropriations to the General Services Administration (GSA) which would provide

services, facilities, and benefits for former President Richard M. Nixon.

Our opinion is requested concerning the eligibility of former President Nixon for services and facilities under the Presidential Transition Act of 1963; limitations upon nonreimbursable details provided to him under the Presidential Transition Act; and the validity of an agreement between the GSA Administrator and former President Nixon regarding the preservation of the latter's Presidential historical materials. Each of these questions in the order here presented is treated separately below.

Eligibility of former President Nixon under the Presidential Transition Act

We have reviewed the correspondence between GSA and the Department of Justice which was enclosed with your letter to us. In a letter to the Attorney General dated August 12, 1974, the GSA Administrator expressed the view that the Presidential Transition Act does apply in former President Nixon's situation, and requested the Attorney General's opinion on this point. In a letter to the Administrator dated August 15, 1974, the Acting Assistant Attorney General, Office of Legal Counsel, held that the Transition Act is applicable to former President Nixon. While this matter is by no means clear, we agree, for the reasons stated hereinafter, with the conclusion expressed by GSA and the Department of Justice.

The purpose of the Presidential Transition Act of 1963, approved March 7, 1964, Pub. L. 88-277, 78 Stat. 158, 3 U.S.C. 102 note, as stated in section 2 thereof, is "to promote the orderly transfer of the executive power in connection with the expiration of the term of office of a President and the inauguration of a new President." To this end, section 3(a) authorizes the Administrator of

General Services to provide, upon request, to each President-elect and each Vice-President-elect, for use in connection with his preparations for the assumption of official duties, necessary services and facilities including (1) suitable office space appropriately equipped and furnished; (2) compensation for office staffs, including the detail of Federal employees; (3) payment of experts or consultants or organizations thereof; (4) travel and subsistance allowances, including manual of Government or hired motor vehicles; (5) communications services; (6) printing and binding expenses; and (7) reimbursement to the postal revenues for the value of mailing privileges authorized under subsection 3(d). Section 4 of the Act provides in part:

> "The Administrator is authorized to provide, upon request, to each former President and each former Vice President, for a period not to exceed six months from the date of the expiration of his term of office as President or Vice President, for use in connection with winding up the affairs of his office, necessary services and facilities of the same general character as authorized by this Act to be provided to Presidents-elect and Vice-Presidents-elect. * * *"

Section 5 authorizes the appropriation of such sums as may be necessary for carrying out the purposes of the Act but not to exceed $900,000 "for any one Presidential transition * * *."

There are certain fairly specific limitations upon the applicability of the Presidential Transition Act. For example, under the definitions of "President-elect" and "Vice-President-elect" contained in subsection 3(c), services and facilities are available only to persons to accede to such offices as successful candidates in a general Presidential election. Also, incumbent Presidents and Vice Presidents who are reelected are not eligible for

transition services and facilities; nor would a new Vice-President-elect who is the running mate of a reelected incumbent President. *Cf.*, H. Rept. No. 301, 88th Cong., 1st sess., 5; S. Rept. No. 448, 88th Cong., 1st sess., 3.

In general terms, and even beyond that portion of the stated purpose in section 2, quoted previously, it is obvious from the basic statutory scheme and legislative history that the Transition Act was enacted only in consideration of a transition occurring through the normal electoral processes. Clearly, no thought was given to the possibility of a Presidential resignation, and, accordingly, it may fairly be said that Congress never specifically intended to make transition services and facilities available to a former President who had resigned. This observation might reasonably be considered sufficient to justify the conclusion that former President Nixon is not eligible for such services and facilities. However, we believe that the absence of a specific affirmative legislative intent in this regard need not be considered dispositive provided that the furnishing of transition services and facilities to a former President by resignation, albeit not foreseen as a possibility, may nonetheless be considered consistent with the express terms of the Transition Act and its general purposes. We further believe that both of these conditions are satisfied.

As noted previously, section 4 of the Transition Act authorizes the provision "to each former President" of services and facilities of the same general character as those authorized for Presidents–elect and Vice-Presidents-elect for a period not to exceed six months "from the date of the expiration of his term of office * * *." While the Transition Act itself does not elaborate upon the quoted language, consideration must be given in this regard to the so-called "Former Presidents

Act," approved August 25, 1958, Pub. L. 85-745, 72 Stat. 836, as amended, 3 U.S.C. 102 note. This statute authorizes the provision to each former President of a pension, office space, and staff allowances for the remainder of his life. A pension is also provided for the widow of a former President.

The relationship between the Transition Act and the Former Presidents Act appears significant in several respects. First, subsection (f) of the Former Presidents Act defines a "former President" as an individual who has held the office of President and whose service in that office terminated other than by removal through impeachment and conviction. Secondly, section 4 of the Transition Act expressly provides that the Former Presidents Act, except for the pension provisions, shall not become effective with respect to a former President until six months after the expiration of his term of office as President. This six-month delay in the operation of the Former Presidents Act was included on the assumption that a former President would, for the first six months after he leaves office, receive services and facilities under the Transition Act, and, therefore, was designed to avoid duplication and confusion resulting from the simultaneous operation of both acts during the six-month period. See H. Rept. No. 301, *supra,* 2-3; S. Rept. No. 448, *supra,* 4.

In view of the integral relationship between the two statutes, we believe it is reasonable that the definition of "former President" contained in the Former Presidents Act should be considered applicable as well under section 4 of the Transition Act. Former President Nixon would, of course, fall within this definition since he was not actually removed from office by impeachment and conviction.

A related matter is whether former President Nixon's "term of office" has expired for purposes of the Transition Act. The concept of "term of office" has different meanings in different contexts. See generally 67 C.J.S., Officers, §42, p. 196; 41 Words and Phrases, "Term of Office," pp. 621-628. While none of the contexts presented in the cited references are particularly analogous to the present consideration, there is some authority to the effect that a fixed term of office expires when the occupant leaves that office. See, for example, the following passage from the opinion of the New Jersey Supreme Court in *Board of Chosen Freeholders v. Lee,* 76 N.J.L. 327, 70 A. 925, 926 (1903):

> "The words 'term of office' may in a sense be used to indicate the statutory period for which an officer is elected. We speak of the term of office of the President of the United States and the term of office of the Governor of the state, meaning that the first was four years and the latter three years; but the words 'term of office' may also mean a period much shorter than that for which the particular officer was elected. His term of office may be terminated before the expiration of the statutory period for which he was elected by impeachment, or resignation, or death of the particular officer. The happening of these contingencies is an implied limitation upon the right of the elected officer to continue in office for the period for which he would otherwise be entitled to hold. When such a contingency occurs, the officer's term expires, there is a vacancy, and upon the appointment or election to fill the vacant office the term of another officer begins. To assert that a term of office of an impeached or deceased officer continues is to assert that there may be two terms of office running together, although the office can be filled but by a single person. * * *"

It seems to us that the relationship between the Former Presidents Act and the Transition Act sheds further light upon this matter. Former President Nixon's term of office either expired on the date of his resignation or it must, in effect, be viewed as continuing until January 20, 1977. The latter approach would produce the incongruous result, by literal application of section 4 of the Transition Act, that he would not qualify for application of the Former Presidents Act, other than the pension provision, until six months after January 20, 1977. Even if former President Nixon's term of office is considered to have expired on the date of his resignation, section 4 of the Transition Act would by its terms still delay operation of the Former Presidents Act in his case, other than the pension, for six months. This result, coupled with a holding that the substantive provisions of the Transition Act do not apply, would also be incongruous since, as noted previously, the only basis for the six-month delay is the assumption that a former President is receiving services and facilities under the Transition Act during this period.

For the foregoing reasons, we believe that former President Nixon may be considered eligible for services and facilities consistent with the express terms of the Transition Act; and, as indicated above, the opposite conclusion would seem to produce results which appear clearly at odds with a reasonable construction of the two statutes taken together. It is also our view that provision of transition services and facilities to a President who has resigned would be consistent with the general objectives of the Transition Act. As noted previously, section 2 of the Act states its purpose to be to promote the orderly transfer of executive power "in connection with the expiration of the term of office of a President and the

inauguration of a new President." Section 2 goes on to state, in part:

> "* * * The national interest requires that such transitions in the office of President be accomplished so as to assure continuity in the faithful execution of the laws and in the conduct of the affairs of the Federal Government, both domestic and foreign. Any disruption occasioned by the transfer of the executive power could produce results detrimental to the safety and well-being of the United States and its people. Accordingly, it is the intent of the Congress that appropriate actions be authorized and taken to avoid or minimize any disruption. * * *"

Simply stated, we can perceive of no reason why a transition resulting from the resignation of a President would be any less significant in terms of the foregoing considerations as stated in section 2 than a transition following a general election; nor does it appear that the needs of a former President for services and facilities in connection with winding up his official affairs would be any less severe merely because he had resigned. On the contrary, such considerations and needs might even be considered more compelling following a Presidential resignation.

In sum, while former President Nixon's resignation gives rise to a unique situation in consideration of the Presidential Transition Act, it is our view that, on balance, a holding that he is eligible for transition services and facilities is less troublesome in terms of the design, operation, and general objectives of the Act than would be the contrary conclusion.

The analysis and conclusions expressed above do not take into account the particular circumstances leading to former President Nixon's resignation since such circum-

stances are, in our view, irrelevant to the legal issues presented. Thus the legal issues would necessarily be the same regardless of the reasons for a President's resignation. Finally, it is noted that the Presidential Transition Act is essentially operative on the basis of appropriations made pursuant to the authorization of section 5. Whether or to what extent appropriations are actually justified in the case of former President Nixon is a separate matter which must, of course, be determined by the Congress.

Nonreimbursable details provided to former President Nixon pursuant to the Presidential Transition Act.

You also request our comments concerning the amount of nonreimbursable details under that portion of paragraph 3(a)(2) of the Presidential Transition Act which states, with reference to staffing for President-elect and Vice-Presidents-elect:

> "* * * *Provided,* That any employee of any agency of any branch of the Government may be detailed to such staffs *on a reimbursable or nonreimbursable basis* with the consent of the head of the agency; and while so detailed such employee shall be responsible only to the President-elect or Vice-President-elect for the performance of his duties; *Provided further,* That any employee so detailed shall continue to receive the compensation provided pursuant to law for his regular employment, and shall retain the rights and privileges of such employment without interruption. * * *" (Emphasis added.)

The same authority to detail Federal employees clearly applies to a former President or Vice President under section 4 of the Act since it is a service "of the same

general character as authorized" for the incoming officials; and, in fact, section 4 expressly provides:

> "* * * Any person appointed or detailed to serve a former President or former Vice President under authority of this section shall be appointed or detailed in accordance with, and shall be subject to, all of the provisions of section 3 of this Act applicable to persons appointed or detailed under authority of that section. * * *"

The basic issue which arises in this regard concerns the relationship between the provision for nonreimbursable details and the overall $900,000 limitation upon appropriations authorized by section 5 of the Act, which provides:

> "There are hereby authorized to be appropriated to the Administrator such funds as may be necessary for carrying out the purposes of this Act but not to exceed $900,000 for any one Presidential transition, to remain available during the fiscal year in which the transition occurs and the next succeeding fiscal year. The President shall include in the budget transmitted to the Congress, for each fiscal year in which his regular term of office will expire, a proposed appropriation for carrying out the purposes of this Act."

Thus the question is whether the cost or value of nonreimbursable details, in terms of the salaries represented, is subject to the $900,000 appropriation authorization limitation under section 5 or, more specifically, any amount which is actually appropriated under section 5.

Absent an overall monetary limitation upon appropriations under the Transition Act, the express authority to detail employees on a nonreimbursable basis would clearly operate without restriction in terms of cost or

value. In elusion of the appropriation authorization limitation and the legislative history of the Act in this regard are somewhat perplexing in this respect. The original version of the Transition Act legislation included the authority to detail on a reimbursable or nonreimbursable basis. On the other hand, the original bill did not impose a limitation upon appropriations authorizing instead appropriation of "such funds as may be necessary for carrying out the purposes of this Act." See H.R. 4638, 88th Cong., 1st sess., as introduced on March 7, 1963. The House Committee on Government Operations added a $1.3 million appropriation authorization limitation in the version of the bill which it reported; and some monetary limitation remained in the legislation thereafter. See H.R. 4638 as reported May 15, 1963. However, we find no indication that the Congress ever considered the effect of a monetary limitation upon the provision expressly permitting nonreimbursable details.

At the same time, the legislative history clearly demonstrates that throughout consideration of this legislation the appropriation authorization limitation was viewed as representing the full scope and value of services and facilities under the Act. Thus the House Committee on Government Operations, in adopting a $1.3 million limitation, observed, H. Rept. No. 301, 88th Cong., 1st sess., 4:

> "The limitation of $1,300,000 for expenditures in any one fiscal year seems reasonable in view of the estimates presented. This can be changed by future legislation if experience so dictates. Any request for funds must, of course, be strictly justified before the appropriation is made by Congress."

During floor consideration, Congressman Fascell, the sponsor of the bill, stated, 109 Cong. Rec. 13350 (July 25, 1963):

> "The committee added to the bill a limitation on expenditures of $1,300,000 for all of the purposes of the bill in any one fiscal year. This seems a reasonable figure considering both incoming and outgoing Presidents and Vice Presidents and was based on the best estimates available to us. Of course, the specific figure to be appropriated in any year must be fully justified before the Appropriations Committee."

Thereafter the following colloquy, *id*, at 13351:

> "Mr. GROSS. * * * Can the gentleman from Florida tell me, if he will, please, how many $100-a-day consultants it is expected will be employed to take care of the incoming President and Vice President in 1964?
>
> "Mr. FASCELL. I may say to the gentleman from Iowa whatever the President can substantiate in his budget request and whatever he can get out of the Committee on Appropriations and whatever may be necessary or required within the limitation of the authorization under this act.
>
> "Mr. GROSS. It is wide open insofar as this bill is concerned, and insofar as the committee is concerned, that is, the Committee on Government Operations?
>
> "Mr. FASCELL. No, I would not say it is wide open at all. We do have a limit on the authorization and we do follow the normal appropriation procedure."

The Senate Committee on Government Operations retained the House–passed $1.3 million limitation in the version of the bill which it reported. The Senate

Committee incorporated the explanation of the House report in this regard. See S. Rept. No. 448, 88th Cong., 1st sess., 3. The Senate report also set forth, as had the House report, recommendation No. 8 of the President's Commission on Campaign Costs, which read in part:

> "We endorse proposals to *'institutionalize'* the transition from one administration to another when the party in power changes. Important reasons for doing so exist wholly aside from the costs to the parties. The new President must select and assemble the staff to man his administration, and they in return must prepare themselves for their new responsibilities.
>
> "We recommend that the outgoing President be authorized to extend needed facilities and services of the Government to the President–elect and his associates. *We also recommend that funds be appropriated, to be spent through normal governmental channels, for that purpose." Id.* at 2 (Underscoring supplied.)

During floor consideration in the Senate, an amendment was adopted which reduced the appropriation authorization limitation to $500,000, 109 Cong. Rec. 19737 (October 17, 1963); and the conferees agreed upon a compromise figure of $900,000. H. Rept. No. 1148, 88th Cong., 2d sess., 2.

Remarks during consideration of the conference report in each House again reflect the understanding that the limitation was comprehensive. In the Senate, Senator Miller observed with reference to the limitation, 110 Cong. Rec. 3397 (February 24, 1964):

> "* * * The Senator from Washington pointed out, in the conference, that this amount is a ceiling; it is not, necessarily the amount of money that will be appropriated. This is an authorization bill; and the Appropriation Committees may not approve amounts up to the ceiling thus set. The expenditures may not come anywhere near that amount. So perhaps the Senator from Georgia and I will, later, have an opportunity together to do something about getting this amount back to the amount which we think it really should be."

Senator Jackson added:

> "I desire to point out that we feel that this is definitely a ceiling; and in my judgment–speaking only for myself, although I am sure I also speak for the Senator from Iowa [Mr. Miller]–they can get along with well under the $900,000 figure." *Id.*

On the House side, Congressman Fascell stated, 110 Cong. Rec. 3539 (February 25, 1964):

> "* * * In the conference we agreed on $900,000 as a reasonable amount, with the expectation that if expenditures went higher than that amount, as we had anticipated in the authorization of the House bill, we could by way of supplemental request take care of the needed additional appropriation."

Again, a colloquy occurred between Congressman Gross and Congressman Fascell, *id.* at 3540:

> "Mr. GROSS. Is the $900,000 to cover both the President-elect and Vice-President-elect?
>
> "Mr. FASCELL. Yes.
>
> "Mr. GROSS. Would this cover the cost of jet planes and the Cadillacs to be assigned to them during the interim period?
>
> "Mr. FASCELL. If such were assigned to them, I would assume they would be covered in the budget request.
>
> "Mr. GROSS. This will not be in addition thereto?

> "Mr. FASCELL. Whatever the services are, itemized in the bill, are authorized and which would be covered by the appropriation. Since the authorization fixes those services, one could not go beyond that."

As indicated previously, the legislative history leaves no doubt that the appropriation authorization limitation was enacted with the intent that it would cover all services and facilities provided under the Transition Act. This intent is further reflected in the second sentence of section 5, relating to budget submissions. We believe that this manifestation of congressional intent is sufficient to overcome any implicit authority under the provisions of the Act to furnish services or facilities other than the detail of Federal employees on a nonreimbursable basis. Nevertheless, we must conclude that this legislative history is simply inconsistent with the Act's express grant of authority for nonreimbursable details. Accordingly, it is our opinion that nonreimbursable details under the Transition Act are not subject to monetary limitations under section 5 or any amount appropriated pursuant to section 5. Since, for the reasons stated above, it appears that this result may not have been intended, the Congress might wish to consider amending paragraph 3(a)(2) of the Transition Act to delete the reference to details on a nonreimbursable basis.

In this regard, it is our understanding that nonreimbursable services and facilities in addition to the detail of employees—such as use of existing Federal office space, equipment, and communications facilities—have in the past been provided under the Transition Act. While our decision at 48 Comp. Gen. 786, 789 (1969), referred to in the text hereinafter, might be considered as implicitly approving such additional nonreimbursable services and facilities, this was not intended and that decision should not be so viewed.

Notwithstanding the absence, in our view, of a monetary limitation, details of Federal employees are clearly subject to certain other conditions and restrictions under the Transition Act. First, as stated in the first proviso of paragraph 3(a)(2), such details may be made only with the consent of the head of the employing agency; although we know of no particular formalities which would apply in this regard.

Second, definite time limitations apply. By virtue of section 3(b), a Federal employee could be detailed to the staff of a President-elect or Vice-President-elect only for a period commencing on the day after a general Presidential election and ending not later than the date of inauguration. In the case of a former President or Vice President, the detail would be limited by section 4 to a period not to exceed six months following the date of expiration of the term of office, or, in former President Nixon's case, the date of his resignation. These time limitations would apply even if appropriations under the Act were made available for a longer period. See 48 Comp. Gen. 786, 789, (1969) (copy enclosed).

Finally, such details would be subject to the general limitations upon the purposes for which any services or facilities are provided pursuant to the Transition Act. In the case of a President-elect or Vice-President-elect, section 3(a) authorizes necessary services and facilities "for use in connection with his preparation for the assumption of official duties as President or Vice President * * *." Section 4 limits provision of services and facilities to a former President or Vice President to those necessary "for use in connection with winding up the affairs of his office * * *." See 48 Comp. Gen. 786, 789, *supra*, and our letter of September 11, 1974, to Congressman Joseph P. Addabbo, B-149372, page 2 (copy enclosed). In this regard, we feel constrained to

suggest that the Subcommittee carefully review the list of Federal employees presently detailed to former President Nixon and the functions which they are to perform. For example, GSA's list of employees now detailed to former President Nixon (Revised Justification, dated September 10, 1974) includes a "butler" and a "maid" who are on the payroll of the Park Service, as well as three "military drivers." It is not apparent to us how such employees would be used by a former President in connection with winding up the affairs of his office.

Validity of an agreement between the GSA Administrator and former President Nixon regarding the preservation of the latter's Presidential historical materials

The September 6 agreement between former President Nixon and the Administrator of GSA provides in some detail for the disposition of Mr. Nixon's Presidential historical materials. The term "historical materials" in the agreement is assigned the meaning given it by 44 U.S.C. 2101, as including–

> "books, correspondence, documents, papers, pamphlets, works of art, models, pictures, photographs, plats, maps, films, motion pictures, sound recordings, and other objects or materials having historical or commemmorative value."

The stated purpose of the agreement is to preserve the materials until such time as Mr. Nixon's intention to donate a "substantial portion" thereof to the United States is consummated. His desire, in making the donation, is said to be that the materials be available, with appropriate restrictions, for research and study.

In 1950, legislation was first enacted authorizing the Administrator of General Services to accept for deposit–

> "the personal papers and other personal historical documentary materials of the present President of the United States, his successor, heads of executive departments and such other officials of the Government as the President may designate * * *,"

subject to restrictions specified by the depositors. Section 507(e) of the act of September 5, 1950, chapter 849, 64 Stat. 578, 588. The intent of this provision was to make it possible for the documents in question to be preserved by the Government with related official records and to be available for scholarly research. H. Rept. No. 2747, 81st Cong., 2d Sess., 15 (1950). Such materials had in the past often been dispersed and, sometimes, lost.

As enacted, the 1950 law did not provide for the Administrator to accept for deposit the papers of a former President, nor was there any provision for the establishement of depository libraries for Presidential papers apart from the National Archives. In 1955, legislation was enacted to achieve both these purposes. Act of August 12, 1955, ch. 859, 69 Stat. 695. Section 1 of the act of August 12, 1955, as amended, 44 U.S.C. 2107, authorizes the Administrator to accept for deposit–

> "the papers and other historical materials of any President or former President of the United States * * * subject to restrictions agreeable to the Administrator as to their use * * *."

The act also provides that:

> "The Administrator, in negotiating for the deposit of Presidential historical materials, shall take steps to secure to the Government, as far as possible, the right to have continuous and permanent possession of the materials * * *." 44 U.S.C. 2108(c).

The House Government Operations Commiteee report on H. J. Res. 330, 84th Congress, the derivative source of the act of August 12, 1955, states that:

> "The enactment of the resolution into law would end the lack of a systematic arrangement for the preservation and use of Presidential papers that has resulted in irreparable loss or dispersion of important bodies of Presidential documents during the 166 years of our Nation's existence. It would enable our Presidents and former Presidents to plan for the preservation of their papers at the place of their choice with the knowledge that the Government has made provision to receive them in the archives of the Nation with adequate provisions for their preservation, with proper safeguards for their administration, and with restrictions on their use that recognize and protect the President's rights." H. Rept. No. 993, 84th Cong., 1st sess. 2 (1955).

The act reflects the recognition that papers and other materials generated and collected by a President in the course of his official duties may become his personal property. We note that the Attorney General has opined, in a letter to the President dated September 6, 1974, that it has apparently been "the almost unvaried understanding of all three branches of Government since the beginning of the Republic" as reflected in "the practices of our Presidents since the earliest times" that the papers and other materials of a former President are his personal property, subject only to certain limitations directly related to the character of the documents as records of Government activity such as, for example, security classification.

Under the September 6 agreement, Mr. Nixon retains legal and aquitable title to the materials and sole control of access to and use of them for the present. He makes a gift to the Nation of the White House recordings effective

September 1, 1979, although they are all to be destroyed September 1, 1984, or at his death, whichever first occurs, and he can order any of them destroyed after September 1, 1979. He expresses his intention to donate a portion of the other materials to the Nation, after he has reviewed them.

The various restrictions on the use of and access to the materials deposited with the Administrator are very broad. However, in negotiating such agreements the Administrator, it seems clear, is to be guided by the legislative goal, which is to secure to the Nation to the extent possible the use of Presidential historical materials, and to prevent their dispersion into private hands, or their loss.

In view of this responsibility of the Administrator, and of the broad discretion given him by 44 U.S.C. 2107 and 2108(c) we cannot say that the September 6 agreement is not valid. We have no basis to assume that the Administrator did not diligently seek to achieve the statutory objectives, or that it would have been possible to negotiate an agreement more favorable to the United States, particularly since the alternative may have been that Mr. Nixon would make no deposit of the materials but rather assert his recognized right of ownership of them to the exclusion of any right of access by the United States. Accordingly, we consider the September 6 agreement to be a valid exercise of the Administrator's authority.

We trust that the foregoing is of assistance to the Subcommittee in its consideration of the pending appropriation requests.

Sincerely yours,

/s/Signature Line
Comptroller General
of the United States

Enclosures

[Caption Omitted in Printing]

INTERVENOR-DEFENDANTS' EVIDENTIARY SUBMISSION AND RESPONSE TO PLAINTIFF'S REQUEST FOR ADMISSIONS

A. EVIDENTIARY SUBMISSION

In accordance with the pre-trial order entered by this Court on June 13, 1975, Intervenor-Defendants hereby submit their evidentiary presentation. The presentation includes:

(1) Affidavits from the following individuals:

Paul Henry Nitze
Morton H. Halperin
Richard N. Goodwin*
George E. Reedy
John P. Roche
James MacGregor Burns
Peter Lisagor
James N. Naughton

*Mr. Goodwin's executed affidavit has not arrived in Washington at the time of the filing of this factual submission. Counsel for Intervenor-Defendants expect the executed affidavit to arrive shortly and will file the affidavit as part of this submission as soon as it arrives. Counsel for Plaintiff were furnished with an unexecuted copy of Mr. Goodwin's affidavit on July 29, 1975.

Robert Novak
Julian P. Boyd

(2) Letter of Elbert B. Smith, dated November 7, 1974. The parties have agreed that the stipulation concerning the affidavits described in (1), *supra,* (see p. 4, *infra*) applies to this letter as well.

(3) Copies, provided by counsel for Plaintiff Nixon on July 29, 1975, of requests made since August 9, 1974 (except for civil litigation discovery demands and grand jury subpoenas) for access to the presidential materials of the Nixon Administration, together with responses to such requests.[1]

(4) Selected portions of the record of the "consolidated cases"—*Nixon v. Sampson, et al.,* Civil Action No. 74-1518, *Reporters Committee for Freedom of the Press, et al. v. Sampson, et al.,* Civil Action No. 74-1533, and *Hellman, et al. v. Sampson, et al.,* Civil Action No. 74-1551. These record portions relate to the range of the materials included within Mr. Nixon's claims of ownership and personal privilege. Counsel for the parties have sought to frame a stipulation regarding the contents of the presidential materials of the Nixon Administration claimed by Mr. Nixon as his own, but have not succeeded in reaching agreement at the time of the filing of this submission. Counsel are continuing,

[1]In our informal discussion request to counsel for Plaintiff, Intervenor-Defendants had sought, among other things, copies of requests for access to the presidential materials of the Nixon Administration and responses thereto arising out of civil litigation. Plaintiff has not complied with this part of our request. In addition, preliminary analysis of those documents which counsel for Plaintiff did provide in response to our informal request suggests that these documents may fail to give a complete description of all requests that have been made since August 9, 1974, for access to the presidential materials of the Nixon Administration, and of all responses made thereto. It may be necessary to pursue this matter further.

however, to seek agreement on such a stipulation. The portions of the record we are now submitting are the following:

(a) Deposition of Jack Nesbitt; November 12, 1974, pp. 15-21, 27-31, 46-47.

(b) Excerpts from submission of defendants Sampson, Buchen and Knight pursuant to Court Order of November 7, 1974:

(i) Memorandum of William F. Matthews, January 12, 1974.

(ii) Description of Presidential Materials of the Nixon Administration Sent to the National Archives Building by the Office of Presidential Papers.

(iii) Memorandum: Categories of Nixon Administration Material Held by White House Security Office.

(iv) Memorandum: Categories of Nixon Administration Material Held by the National Security Council.

(v) Memorandum: Materials held in Safe Zone 128 and Room 249, EOB.

(c) Complaint of Reporters Committee, *et al.* in No. 74-1533.

(d) Answer of Intervenor-Defendant Richard M. Nixon in No. 74-1533.

(e) Transcript of Court Proceedings, October 22, 1974, pp. 114-15, 140-42.

(5) Letters dated September 5, 1974 and September 11, 1974 relating to a request by Maxine Cheshire for access to records relating to gifts from foreign heads of state to Plaintiff Nixon and his family.

* * *

Four stipulations signed by counsel for all parties to the instant case with respect to certain factual matters are being submitted by Defendants.

Intervenor-Defendants also incorporate by reference the documents included in the presidential materials of the Nixon Administration claimed by Plaintiff, as specified in the schedule to Intervenor-Defendants' Request for Admissions dated July 29, 1975; a total of 127 documents are listed here. These documents are included in *Statement of Information,* Hearings on H. Res. 803 before the House Committee on the Judiciary, 93rd Cong., 2nd Sess. (1974).

In addition, Intervenor-Defendants will rely on portions of the transcript of the deposition of Plaintiff Richard M. Nixon, taken July 25, 1975, as well as exhibits thereto and published documents identified therein. The transcript of the Nixon deposition has not been completed at the time of this filing. Intervenor-Defendants will also rely on portions of the deposition of Jeanne W. Davis taken by counsel for Plaintiff on July 30, 1975, and the exhibits thereto.

Finally, Intervenor-Defendants will refer in their brief to historical treatises, articles and materials; to government reports and publications; and to published memoirs and writings of former Presidents and their advisors.

B. RESPONSE TO PLAINTIFF'S REQUEST FOR ADMISSIONS

Plaintiff has asked Intervenor-Defendants to admit certain facts with respect to his evidentiary submissions. Intervenor-Defendants respond as follows:

—Items 1-4 of the request for admissions relate to Plaintiff's affidavits. The response of Intervenor-

Defendants to these four requests is covered by stipulation of the parties dated July 30, 1975.

—Item 5 of Plaintiff's request relates to a document entitled "Description of the White House Taping System" prepared by counsel for Plaintiff. The response of Intervenor-Defendants to this request is covered by stipulation of the parties dated July 30, 1975.

—Item 6 of Plaintiff's request relates to a press release incorporating a document dated September 6, 1974, and entitled "Text of a Legal Opinion by the Attorney General." Intervenor-Defendants admit that this item is an accurate and genuine copy of the document described, but deny that the document has any further evidentiary value.

—Item 7 of Plaintiff's request relates to a study by the Library of Congress, Congressional Research Service, entitled "Ownership of Presidential Papers," and dated September 24, 1974. Intervenor-Defendants admit that this item is an accurate and genuine copy of the document described. To the extent that the document contains legal analysis or conclusions, Intervenor-Defendants deny that the document has any evidentiary value.

—Item 8 of Plaintiff's request relates to a letter sent from Elmer B. Staats, Comptroller General of the United States, to Senator Joseph M. Montoya, dated September 20, 1974. Intervenor-Defendants admit that this item is an accurate and genuine copy of the document described, but deny that the document has any further evidentiary value.

—Item 9 of the Plaintiff's request relates to the Depository Agreement between Plaintiff Nixon and Arthur F. Sampson, Administrator of General Services, dated September 6, 1974. Intervenor-Defendants admit

that this item is an accurate and genuine copy of the document described.

—Item 10 of Plaintiff's request relates to a document entitled "Direct Testimony of John Nesbitt," prepared by counsel for Plaintiff. Intervenor-Defendants' response to this request is covered by stipulation of the parties dated July 30, 1975.

Respectfully submitted

/s/Robert E. Herzstein
Robert E. Herzstein
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Mark J. Spooner
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/s/William A. Dobrovir
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/s/Leon Friedman
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Southern California Avenue

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Attorney for Intervenor-Defendants
Lillian Hellman, *et al.*

July 31, 1975

[Caption Omitted in Printing]

AFFIDAVIT OF GEORGE E. REEDY

STATE OF WISCONSIN)
) SS
COUNTY OF MILWAUKEE)

GEORGE E. REEDY being first duly sworn deposes and says:

1. I am Dean of the College of Journalism and Nieman Professor of Journalism at Marquette University, 1131 West Wisconsin Avenue, Milwaukee, Wisconsin.

2. I was Special Assistant to the President from November, 1963 to March, 1964, and again from August, 1965 to May, 1966. I was White House Press Secretary from March, 1964 to August, 1965. I was Special Consultant to the President from March, 1968 to December, 1968.

3. I also served as Special Assistant to the Vice President from 1961 to 1963, with special responsibilities in the areas of space exploration and equal employment. From 1953 to 1960 I was Executive Director of the Senate Democratic Policy Committee. From 1951 to 1952 I served as Special Consultant to the Senate Armed Services Preparedness Subcommittee. Prior to that time I was a journalist for United Press International stationed in Washington, D.C.

4. I have written two books on the presidency: *The Presidency in Flux* (Columbia University Press, 1971) and *The Twilight of the Presidency* (The New American Library, Inc., 1970). I have also written numerous articles for *The New York Times, The Los Angeles Times,* and *The New Republic.* I am presently preparing another book on the political process.

5. As Press Secretary to President Johnson, it was part of my duties to attend substantially all of the relatively formal meetings involving the President, such as National Security Council meetings, Cabinet meetings and meetings with the legislative leaders. In addition, I attended most special meetings involving the President, including substantially all such meetings which were attended by groups of two or more persons in addition to the President himself. Such meetings related to his political role as well as those related to his governmental role as Chief Executive.

6. Such extensive involvement in the daily activities of the President, and in his meetings with members of the White House staff, governmental officials, members of Congress, and private groups and individuals is essential to the conduct of the Press Secretary's functions, in order to assure that he reflects an accurate grasp of the workings of the White House in his exchanges with the press. The Press Secretary's regular attendance at such meetings is also essential in order to inform participants in the meetings of the likely reactions of the press to various proposed courses of action under consideration.

7. As Special Assistant, Press Secretary, and Special Consultant, I regularly advised President Johnson on a variety of issues including especially the treatment of minorities, labor matters, Selective Service and communications. As Press Secretary, I also advised the President concerning dealings with the press.

8. Most group meetings would be known in advance to the press. Usually they would be placed formally on the President's schedule and publicly announced, large because it is not, as a practical matter, possible to prevent the White House press corps from discovering that particular groups are meeting with the President. In the large majority of instances, with the exception of the National Security Council, the subject matter of Presidential meetings was also announced in advance; such advance notice resulted from the likelihood that knowledge of the content of the meetings would quickly become known to the press, even if no formal announcement of the subject matter was made.

9. There were a number of mechanisms by which the statements made and positions and actions taken at such meetings were transmitted to the press and the public:

A. Following meetings with the President, it was normally the practice that a briefing would be provided to the press, usually conducted by the Press Secretary, summarizing the discussions and decisions reached at the meeting in question.

B. A considerable amount of the background information about Presidential decisions and activities—in my judgment, 50% to 60% of the real news of such activities—was not communicated to the press through formal briefings, but through informal contacts originated by the President or by other participants in White House meetings. Such communications often reflected what could be called "controlled leaks"—that is, informal briefings by officials other than members of the Press Staff to one or more representatives of the press, often on a "background" or not-for-attribution basis—at the instance of the President or other advisers. Such informal communications generally included significantly more detail as to the role played and position taken by a

particular individual than did the formal briefings. Generally, the participants in meetings with the President played little or no role in the determination of what information to impart through controlled leaks.

C. In addition, a considerable amount of similar information reached the press from informal and unauthorized leaks by other participants in such meetings. Such leaking was a frequent factor in the process of policy-making within the White House. It was also employed at times to serve the career interests or policy views of the particular individual responsible for a given leak.

10. Apart from information about communications involving the President which was made available to the press more or less immediately, a considerable amount of information, often involving highly sensitive areas of national policy, reached the public very soon after the end of the Johnson Administration. Some of the examples of books which have revealed positions of various presidential advisers on sensitive issues are David Halberstam's *The Best and the Brightest* (1972) and President Johnson's own memoirs *The Vantage Point* (Holt, Rinehart & Winston, 1971).

11. Only a very naive author of a written communication involving the President would expect such a communication to remain confidential, especially on an indefinite basis. Apart from the possibility that such communications might be immediately disseminated, or "leaked," to the press, it was understood that President Johnson had the intention of placing all papers relating to his Presidency in a library to be made publicly available at the earliest possible opportunity. An oral communication to the President, with no one else present in the room, had a better chance for temporary confidentiality

but no man or woman of prudence would count on indefinite confidentiality.

12. Based upon my experience, because of all of the above avenues by which information can become public, persons involved in internal communications with the President, including myself, had no assurance or expectation of confidentiality, especially on an indefinite basis. I do not believe this was an inhibiting factor in advice to the President, however, as the risk of disclosure is merely a normal factor in political dialogue which mature people weigh and discount as a normal condition of their activity.

/s/George E. Reedy
George E. Reedy

Subscribed and Sworn to Before me
this 24th day of July, 1975.

/s/Lila Henschel
Notary Public
My Commission expires 1/9/77.

[Caption Omitted in Printing]

AFFIDAVIT OF PAUL HENRY NITZE

COUNTY OF ARLINGTON)
) ss:
COMMONWEALTH OF VIRGINIA)

PAUL HENRY NITZE, being first duly sworn, deposes and says:

1. I have for thirty-five years been actively involved, both in and out of government, in the study

and conduct of American foreign and military policy, and have occupied positions in the Administrations of Franklin D. Roosevelt, Harry S. Truman, Dwight D. Eisenhower, John F. Kennedy, Lyndon B. Johnson, and Richard M. Nixon.

2. During World War II, my work included service with the Office of Coordinator of Inter American Affairs, Board of Economic Warfare, Foreign Economic Administration and as Director and then Vice Chairman of the United States Strategic Bombing Survey. From 1946-1949, I served as Director of the Office of International Trade Policy and Deputy Assistant Secretary for Economic Affairs and from 1950-1953, as Director of the Policy Planning Staff in the Department of State. From 1961-63, I served as Assistant Secretary of Defense for International Security Affairs, and subsequently (1963-67) as Secretary of the Navy, and (1967-69) as Deputy Secretary of Defense. From July, 1969 until June, 1974, I served as a member of the United States delegation to the Strategic Arms Limitation Talks with the Soviet Union.

3. Outside of government, I have served as President of the Foreign Service Educational Foundation, as Chairman of the Advisory Council of the School of Advanced International Studies at Washington, D. C. and as a Trustee of Johns Hopkins University.

4. While serving as Assistant Secretary of Defense for International Security Affairs, I was responsible to Mr. McNamara for the coordination of U.S. Defense Policy with U.S. Foreign Policy, working with the State Department, the White House, the NSC and the other pertinent parts of the Executive Branch. In addition, President Kennedy had personally asked me to take an active role in certain matters having to do with arms control and with France. In late 1961 and early 1962,

one of the difficult national security issues we faced concerned the efforts of the French Government under President DeGaulle to raise doubts about the reliability of the American nuclear deterrent, with respect to Soviet threats to the security of Western Europe. Such doubts were invoked to justify the French policy of establishing a national nuclear striking force, termed the "Force de Frappe." A major objective of United States policy was to discourage the proliferation of nuclear weapons into the hands of additional national governments.

5. During the above period, it was alleged by the French Government that, during the Suez crisis in 1956, when Soviet Premier Khrushchev had publicly threatened a nuclear missile strike against French and British cities if the Suez operations were continued, the United States Government had failed to support the French and British. The French alleged that in 1956 the United States Ambassador to France, C. Douglas Dillon, had been personally asked by the French Prime Minister, Mr. Guy Mollet, whether the United States would commit its own intercontinental nuclear force to counter such a Soviet threat against France, even though the situation provoking the crisis was located outside the boundaries to which the NATO Agreement, strictly construed, pertained. The French alleged that the United States had not in 1956 provided firm assurance that its allies could count on the full support of the United States under the circumstances.

6. Mr. Dillon, who in 1961 was serving as Secretary of the Treasury, had told me and others that he had in 1956 given the French Prime Minister firm assurances that the United States nuclear deterrent could be counted upon to support its Western European allies in the face of any nuclear threat from the Soviet Union, including any such threat to France arising from the Suez

incident. Although Mr. Dillon recalled sending a reporting telegram to Washington on this subject, it could not be located in the State Department files.

7. There was, of course, no question on the part of myself, or any other concerned officials, as to the accuracy of Secretary Dillon's recollections regarding the statement of the American position given by him to the French Prime Minister in 1956. Nevertheless it appeared desirable to obtain such written records as had been made by our government at the time of the disputed events. As a result, Dr. Timothy Stanley, then serving as my Special Assistant and who had also served as Special Assistant to my predecessor in that office during the closing years of the Eisenhower Administration, was directed to request Secretary Dillon's report on the Suez incident and such other pertinent records of the American position as might be available in former President Eisenhower's papers. As is noted in the affidavit of John S. D. Eisenhower (¶ 23) submitted to the District Court June 30, 1975, on behalf of former President Nixon, and in Exhibit B to Mr. Eisenhower's affidavit, Dr. Stanley telephoned Mr. Eisenhower to request the materials in question from former President Eisenhower's papers. As Mr. Eisenhower indicates in Exhibit B to his affidavit, Dr. Stanley did not insist on making the necessary search of former President Eisenhower's papers himself, but stated to Mr. Eisenhower that it would be acceptable for those in charge of the Eisenhower collection to retrieve the materials.

8. Upon being informed, as is recounted in Mr. Eisenhower's affidavit and Exhibit B thereto, that the materials sought could not be obtained except through a personal request from Secretary McNamara to former President Eisenhower, Dr. Stanley reported back to me. It is my recollection that I took the matter up with Secretary McNamara and that after some consideration,

taking account of the delicacy which then marked relations between the new Administration and the former President, and considering also the need which the new Administration had discovered to make a variety of requests of the former President, including requests for his support on certain important current foreign policy decisions, it was determined not to pursue this matter further. The decision was that, although the question of the credibility of the American deterrent, especially regarding our West European allies, was of high significance, and although the matter of the American response to Soviet nuclear threats in 1956 bore centrally on this issue, it would nevertheless have to be sufficient to rely upon Secretary Dillon's statement of his recollections, in view of the general importance of minimizing the number of occasions on which the Administration would make a request of former President Eisenhower. Hence, the decision was made to proceed without written record of the American Government's official responses to the issuance of Soviet nuclear threats during the 1956 Suez crisis.

9. I have reviewed the affidavit submitted by Mr. John S. D. Eisenhower in support of former President Nixon and Exhibit B thereto. I note Mr. Eisenhower's observation in Exhibit B to the effect that if the issue "truly involves national security (which seems highly doubtful)," that Secretary McNamara could therefore request of former President Eisenhower permission to send a representative to him to demonstrate the legitimacy of the request. I would have here to emphasize that the decision not to pursue the matter further was not made because it did not "truly involve national security." Nor did this decision reflect any judgment on our part that it is not essential to preserve written records of major commitments and actions taken in the field of

national security policy. On the contrary, the continuity of government requires that officials have at hand the written record of past commitments and actions taken on behalf of the nation by its highest officials. Access to materials restricted on national security grounds should be confined to officials properly cleared, and to those who properly require such access. But on the basis of my experience, it would be my judgment that it is not in the nation's best interests to require personal intervention of the highest officials, such as the Secretary of Defense, to obtain access to such materials. Nor should access to critical records be conditioned on the outcome of what are in effect negotiations with former chief executives exercising personal dominion over such records.

/s/Paul Henry Nitze
Paul Henry Nitze

Subscribed and sworn to before
me this 17 day of July, 1975.

/s/Barbara E. Goodwyn
Notary Public

My Commission Expires 5-8-77.

[Caption Omitted in Printing]

AFFIDAVIT OF MORTON H. HALPERIN

CITY OF WASHINGTON)
) ss:
DISTRICT OF COLUMBIA)

MORTON H. HALPERIN, being first duly sworn, deposes and says:

1. I have since 1960, when I completed my doctorate at Yale University, been actively engaged in the study and in the conduct of foreign and military policy. From 1960-1966, I was associated with Harvard University's Center for International Affairs and was an assistant professor of government at Harvard University. From 1966-1970, as I discuss below, I served in the Department of Defense and on the staff of the National Security Council in the White House. From 1970-1973, I served as a Senior Fellow at the Brookings Institution. I am currently Director of a Project on National Security and Civil Liberties jointly sponsored by the Center for National Security Studies and the American Civil Liberties Union Foundation.

2. Since 1960, I have published many articles dealing with national security policy in scholarly and other journals, as well as several books, including *Strategy and Arms Control* (with Thomas C. Schelling) (Twentieth Century Fund, 1961), *Limited War in the Nuclear Age* (John R. Wiley & Sons, 1963), *China and the Bomb* (Praeger, 1965), *Bureaucratic Politics and Foreign Policy* (Brookings, 1973), *National Security Policy-Making* (D. C. Heath, 1975).

3. From 1966-1969, I served in the Department of Defense. Beginning in 1967, I was Deputy Assistant Secretary of Defense in the Office of International Security Affairs. In this capacity, I originally reported to Assistant Secretary of Defense for International Security Affairs John T. McNaughton and, after his death, to his successor, Paul C. Warnke. My areas of responsibility during this period included planning for the preparation of the Strategic Arms Limitation Talks ("SALT"), overall responsibility for the production of a history of United States–Vietnamese relations, subsequently known as the "Pentagon Papers," and United States–Japanese relations.

4. In December 1968 and January 1969, I was requested by Henry A. Kissinger, who had been appointed by President-elect Richard M. Nixon to be his Assistant for National Security Affairs, to assist in transition planning in the national security area for the incoming Administration. My work included planning for the establishment of a new National Security Council administrative system, determination of which Presidential directives issued through the National Security Council under past Administrations should be permitted to remain in effect under President Nixon, planning for the SALT discussions, and the preparation of papers concerning the status of Vietnam policy and strategic forces.

5. From January 1969 through September 1970, I served as Assistant for Planning on the staff of the National Security Council under Mr. Kissinger. My responsibilities, in addition to the substantive areas noted in paragraph 4 above, included the preparation of the briefing books used by Mr. Kissinger and President Nixon at the weekly meetings of the National Security Council.

6. On January 20, 1969, when members of the incoming National Security staff reported to work, we discovered that, except for certain central files of former National Security Council "Decision Documents" and personal files of officials remaining on the National Security Council staff, no National Security Council files remained on the premises. All safes which had formerly contained highly restricted material were empty.

7. In connection with my responsibilities during the transition period and as a member of the National Security Council staff, regarding the initiation of SALT negotiations, it was necessary to determine the status of discussions on this subject between the outgoing President and Soviet leaders. In particular, it was important

for the new Administration, in planning its initial negotiating posture, to understand the nature of initiatives to the Soviet Union made by the Johnson Administration during late 1968 and early 1969 concerning SALT. Members of the incoming National Security Council staff were made aware that, in the closing weeks of the Johnson Administration, President Johnson had caused to be delivered to Soviet Ambassador Dobrynin a proposed statement of principles intended to establish a framework for the conduct of negotiations to limit nuclear arms. It was the intention of the Johnson Administration to arrive at an understanding with the Soviet Union regarding such a statement of principles and publicly to announce that such an understanding had been reached between the two countries, before the end of the Johnson Administration. Negotiations with Ambassador Dobrynin concerning this proposal had been conducted by White House officials. Ultimately, the negotiations were unsuccessful, as the Soviet leadership decided not to proceed on SALT before the accession to power of the New American Administration.

8. No copies of the relevant materials recording these pre-SALT negotiations by the Johnson White House were evident in files of the State Department or of other agencies. Nor were such records contained in any of the files available to the National Security Council staff in the White House. It was understood that all copies of such materials had been taken from the White House by President Johnson. A review of cable traffic during the closing weeks of the Johnson Administration revealed a directive to the United States Ambassador to the North Atlantic Treaty Organization to discuss with leaders of member countries certain principles for limiting nuclear arms. The conclusion of the new National Security Council staff was that principles stated in the cable to the

NATO Ambassador must have resembled the proposal given to Ambassador Dobrynin.

9. As the above discussion indicates, in my experience and judgment, it is inimical to the best interests of assuring continuity in the conduct of national security policy for policymakers not to have ready access to the records of the commitments and other actions taken by the President and other high officials under previous Administrations. For example, in the case discussed above, the occurrence of President Johnson's unsuccessful pre-SALT negotiations was known to the new Administration only because the new Administration contained certain individuals who had been involved in the making of national security policy during the Johnson Administration. Under other circumstances, the results could have differed. For example, in 1961, the incoming Kennedy Administration National Security Council staff included few holdovers from the Eisenhower staff. The absence of files such as those containing the record of the Johnson SALT initiative could then have meant that the new Administration would have no knowledge whatsoever that such an initiative had been undertaken.

10. Another important example of the potential handicap that may be imposed upon national security policymakers by depriving them of ready access to copies of pertinent records from past Administrations occurred very recently. In early April 1975, it was publicly charged, by Senator Henry Jackson, among others, that, prior to the signing of the Paris Accords in January 1973, President Nixon had given South Vietnamese President Thieu secret assurances, not disclosed in the documents of public record, to the effect that the United States would take strong military action to counter certain North Vietnamese violations of the ceasefire agreement.

Subsequently, on April 30, 1975, a member of President Thieu's cabinet released to the public letters from President Nixon dated November 14, 1972, and January 5, 1973, which showed that such commitments had in fact been given to President Thieu. On April 15, 1975, I wrote to the Department of State and the National Security Council requesting, *inter alia*, copies of letters from President Nixon to President Thieu indicating what the United States would do if there were violations of the Vietnam ceasefire agreement. The Department of State advised me that it was releasing in whole or in part all the documents in its possession. The documents released did not include any of these letters. The National Security Council advised me that the letters could not be released since they were part of the Nixon papers. Copies of my letters to the Department of State and the National Security Council, together with the replies to these letters and my responses to the replies, are attached as exhibits to this affidavit.

11. On the basis of my experience, it would be my definite judgment that it would be essential for national security policymakers to be aware of and to have access to commitments such as those evidently made by President Nixon to President Thieu in this case. Since the only records of President Nixon's commitments were treated by him and by the government as included within his Presidential materials, it would appear that, but for the statute under consideration in this case (Pub. L. No. 93-526) and the order of the United States District Court for the District of Columbia, issued October 22, 1974, in *Nixon v. Sampson, et al.* (C.A. No. 74-1518), temporarily restraining Mr. Nixon from removing his Presidential materials from Washington, access to records of these commitments, by government officials as well as by the public, would have been lost except insofar as Mr. Nixon was willing to make the records available. I believe it is

proper for Presidents and other high officials to take with them for their own records—but not for inappropriate or indiscriminate disclosure and use—*copies* of documents for which they were responsible. However, by no means, should Presidents and other high officials be in a position to deprive future Administrations of ready access to the record of their own actions taken on behalf of the United States. In my opinion, leaving that prerogative with a former President does not best serve the conduct of national security policy.

/s/Morton H. Halperin
Morton H. Halperin

Subscribed and sworn to before
me this 17 day of July, 1975.

Mary L. Coyle
Notary Public

My Commission Expires Nov. 14, 1978

[Caption Omitted in Printing]

AFFIDAVIT OF JAMES MACGREGOR BURNS

STATE OF MASSACHUSETTS)
) ss:
COUNTY OF BERKSHIRE)

James Macgregor Burns, being duly sworn, deposes and says as follows:

1. I am Woodrow Wilson Professor of Political Science at Williams College, Williamstown, Massachusetts,

and President-elect of the American Political Science Association and have written a book, Presidential Government, dealing with the power of the presidency.

2. The White House has changed enormously as an institution since the last century, and even since Franklin Roosevelt's time. The individual presidency has come to be absorbed in the broader White House bureaucracy, just as that White House bureaucracy has tended to take over one-time semi-autonomous institutions, such as the Cabinet, the Vice Presidency, the independent regulatory commissions, and the like. The President is *primus inter pares,* but a great deal of decision-making emerges from the interplay of the large personal and institutional staff around the President. It might have been appropriate some time back for a President to claim personal possession of materials and documents emanating from a small White House, but today the documents are essentially "institutionalized."

3. This institutionalization and depersonalization of White House materials means that a large number of people have a vital and specific interest in those materials. There is an extensive "civil service" in the White House that goes on from administration to administration. When a President leaves or dies in mid-term, there are countless policymakers in the White House who continue to have a heavy dependence on the availability of Presidential documents. Sometimes, indeed, the best communication in the White House takes place through the availability of recent documentary material.

4. Scholars are particularly concerned about the quick access to White House materials because of what has been called the "speeding up of history" or the "acceleration of history." At one time, in the world of diplomacy and war and economic policy and the like, it was feasible to wait some time before having access to the

documents, because there were long periods of time between wars and between depressions or economic crises. But the 20th century, with its repeated crises of increasing frequency, the development of transportation and communication, and the increasing interdependence of nations, has produced a situation in which the time is very short for scholars, reporters, and analysts of various sorts to get to documentary material. We simply cannot wait the decade or two or three that it was possible to wait some time ago, when nations could ponder at some leisure the lessons of the most recent depression, war, foreign policy confrontation, or other crises. Hence, we cannot wait while Presidents make leisurely decisions as to the disposition of their papers. And, on all counts, the threat of Presidential destruction of papers is most serious.

/s/James MacGregor Burns
James MacGregor Burns

Subscribed and sworn to before me, a Notary Public, this 17th day of December, 1974.

/s/Carol A. Gleason
Notary Public

My Commission Expires
March 14, 1980

[Caption Omitted in Printing]

AFFIDAVIT OF PETER LISAGOR

CITY OF WASHINGTON)
) ss:
DISTRICT OF COLUMBIA)

PETER LISAGOR, being first duly sworn, deposes and says:

1. I am Washington Bureau Chief of the *Chicago Daily News* and have served as the White House correspondent of my paper going back to the Administration of Dwight D. Eisenhower.

2. In this capacity, I have had countless conversations with advisers and staff assistants of Presidents Eisenhower, Kennedy, Johnson, Nixon and Ford, as well as with Cabinet officers, who related discussions they had with the President, advice given him, and positions taken by other advisers.

3. It is not uncommon for one adviser to describe on a "background" basis the position he and other advisers have taken on issues as critical as national security matters and as commonplace as domestic decisions. During the Cuban Missile Crises of 1962, for example, advisers to President Kennedy discussed their own and opposing positions. Other examples of this practice in my experience included the landing of Marines in Lebanon in 1958, the decision to bomb North Vietnam in 1965, the decision to mine Haiphong harbor in 1972, the decision to dispatch force to free the *Mayaguez* freighter and crew from the Cambodians in 1975, to cite a few.

4. This is a time-honored practice for communications between the press and White House advisers. It is pursued for a variety of reasons, including a genuine

desire to explain the rationale for Presidential actions, to promote the source's own substantive views and purposes, to explain the divergent options available to the President, to portray the source as a fount of superior wisdom and judgment, and to reflect the constant struggle for influence within the White House.

5. It would be an exaggeration to claim that no confidentiality—or respect for its need among newsmen—exists or that every exchange between the President and his advisers automatically becomes a matter of public knowledge immediately. However, the practice is widespread enough to make unrealistic the claim that advisers to the President can function with the expectation that their positions will not eventually become public.

/s/Peter Lisagor
Peter Lisagor

Subscribed and Sworn to Before
me this 17th day of July, 1975

/s/[Illegible]
Notary Public

My Commission Expires January 1, 1980.

[Caption Omitted in Printing]

AFFIDAVIT OF JAMES M. NAUGHTON

CITY OF WASHINGTON)
) ss:
DISTRICT OF COLUMBIA)

JAMES M. NAUGHTON, being first duly sworn, deposes and says:

1. I am the White House correspondent for *The New York Times* and have been in this position since May 5, 1975. Prior to that time, I was the Assistant White House correspondent for *The New York Times* from October, 1969 to January, 1972. From January, 1973 to May, 1975, I was the Congressional correspondent for *The New York Times.* I have been a reporter on national affairs for *The New York Times* since July, 1969.

2. In my capacity as White House correspondent for *The New York Times,* I have written news articles frequently that described activities and deliberations of the President of the United States, his staff and the Cabinet in the formulation of governmental policies. These articles have reported numerous conversations between the President and members of the White House staff, the Cabinet departments, the leaders and members of Congress and outside advisors to the President.

3. There is, obviously, considerable confidentiality of deliberations in the White House. However, disclosures by one advisor or another, or by the President himself, of the nature and the details of policy deliberations are, in fact, a useful part of the governmental function in Washington and are recognized as such by both officials and reporters. It is quite common for those who engage in conversation with the President to "leak" to reporters information regarding specific discussions in which they

have participated or which they have observed. It is not unusual—in fact, it is common—for one advisor to relate to me and to other reporters for publication the nature of advice another advisor has given to the President. Interviews of this sort are a regular source of material for news articles that have been, are and will inevitably continue to be written by me and by others who cover the White House. To pretend that such practices do not occur or that they do not serve a desirable purpose on both sides is to feign ignorance of the manner in which a free press operates or, more serious, to attempt to frustrate that process by limiting available information to "official" pronouncements which, recent history has shown, can be at best misleading and at worst deliberately false.

No one would deny that there are matters which a President and his advisors would prefer to keep confidential for whatever motive, personal or political, substantive or supercilious. But it would seem obvious to any student of the so-called Watergate scandals that the risks of excessive Presidential secrecy far outweigh any imagined or real perils posed by breaches of White House confidentiality. To proclaim that government information is the property of the public official rather than of the public would be to refute the concept of openness that has been enshrined for two centuries in our Constitution—and paid homage, however sincerely, by virtually every candidate who has sought election to national office.

4. However haphazard and, for a reporter, unsatisfactory are the methods by which Presidential deliberations are made known, the fact is that they customarily are. Often this is because it suits the purpose of the White House, Cabinet or Congressional officials, for reasons such as these:

—to advance a particular view by influencing the reporter's story and the information the reporter has available in a manner which the official believes to be consonant with the best interests of the country, his particular office or his own personal political fortune;

—to test public opinion on a particular policy option, i.e., to float a "trial balloon;"

—to enlighten the public as to the considerations that underlay a particular policy determination and thus attempt to further public consent;

—to influence the course of an election;

—to maintain or to advance an official's own position in any political skirmishing within the policy levels of an Administration.

The practices discussed below should help to demonstrate that in the real world of government no one who communicates with the President on a matter of public concern can—one might also say should—do so with the assurance that the advice will not be disclosed to the public at some point:

5. In the period that I covered the White House during the Nixon and the Ford Administrations, it was by no means rare to obtain from White House and other officials descriptions of Cabinet meetings or policy discussions that, depending on the purpose of the official or the ability to protect the source of information from disclosure, ranged from tidbit to detailed chronology.

(a) On one of my first assignments as a national affairs correspondent for *The New York Times,* I was one of two reporters to obtain from an official of the Department of Health, Education and Welfare a detailed account of the outcome of policy disputes over the shape of a welfare reform proposal made in August, 1969 by President Richard M. Nixon. The

details were provided several days prior to the official announcement of the proposal and included information on how the President had resolved conflicting views of principal advisors on the issue. The other reporter, then working for the National Broadcasting Company, was coincidentally, Ron Nessen, now the Press Secretary to President Gerald R. Ford.

(b) Throughout the Nixon Administration, certain White House officials regularly provided to me and to other reporters anecdotes about President Nixon's meetings with the Cabinet and various other officials and individuals. Invariably, these anecdotes cast President Nixon in a favorable light.

(c) An advisor to President Nixon confided to me on September 30, 1969, on a matter of obvious sensitivity to the White House, that it was the President who decided that the United States Army should not pursue criminal prosecution of six Green Beret soldiers accused of murdering a South Vietnamese intelligence agent. Then-White House Press Secretary, Ronald L. Ziegler, who had denied any Presidential role in the decision, confirmed it the following day after the disclosure in *The New York Times.*

(d) On February 20, 1970, *The New York Times* published an account which I wrote on the basis of information provided by several White House officials of the manner in which President Nixon prepared the first State of the World message to the Congress. The news article contained examples of phrases and words that had been rewritten by such advisors as Henry A. Kissinger, then the President's advisor on national security, with the objective of persuading Americans to eschew an isolationist attitude toward world affairs.

(e) Another instance of a purposeful White House "leak" involved the efforts of several White House officials in January, 1971 to let me and other reporters know of President Nixon's private "jawboning," i.e., confrontation, of steel industry executives in order to reduce the extent of steel price increases.

(f) On October 23, 1973, *The New York Times* published a long, detailed description—including quotes of such individuals as then-Attorney General Elliot L. Richardson—of the private events and maneuvers which led to the resignation of Spiro T. Agnew from the Vice Presidency. The account, which I compiled with the assistance of four colleagues, contained, among other things, comments from Administration officials on the role that President Nixon played in hastening his Vice President's resignation.

(g) A number of White House officials provided me with information for a May 26, 1975 article in *The New York Times* about President Ford's plans to develop a domestic "agenda for the future" that would reflect a politically conservative approach to government programs. The article told, among other things, how a conversation between President Ford and James Q. Wilson, a professor of Government at Harvard University, about law enforcement had spawned the President's subsequent proposal that repeat criminal law violators be given mandatory prison sentences on conviction. A White House official volunteered an account of the private discussion and neither the President nor Professor Wilson objected to its disclosure.

6. Members of Congress are among the most generous sources of information on their meetings, and those of their colleagues, with Presidents. The Republican and Democratic leaders of the Senate meet almost daily with

reporters a few minutes before the Senate convenes—in what is known among the reporters as "dugout chatter"—to answer questions that frequently deal with their advice to the President. That this practice and others are common and accepted forms of transacting exchange of information about Presidential meetings is best reflected in the White House tradition of presenting the Republican leaders of both the Senate and the House of Representatives to brief reporters after each of the leaders' regular private meetings with the President. There are other examples:

(a) Members of Congress disclosed, and I wrote in *The New York Times* onApril 26, 1971, that Representative Olin E. Teague, Democrat of Texas, was consulted by President Nixon as to whether Representative Teague believed Army Lieutenant William L. Calley had been sentenced to an unduly harsh punishment—life imprisonment—for the murder of South Vietnamese civilians at the hamlet of My Lai. The Congressional sources also related that Mr. Teague had told the President the sentence should be lighter and that the President asked Representative Teague to encourage that view among other leading members of the House of Representatives.

(b) Literally dozens of members of Congress gave reports, some of them from handwritten notes, to me and other reporters after having taken part in private meetings with President Nixon in November, 1973 about the Watergate case. The private White House meetings, which were described as "Operation Candor," seemed intended to leak Mr. Nixon's replies to published allegations about his conduct. The resulting news accounts, including mine, were replete with direct quotes from the President, such as his remark that he had undergone "seven months of pure hell over Watergate."

(c) In an interview I conducted with Senator Robert C. Byrd of West Virginia, the Senate Democratic Whip, in November, 1974, he volunteered (and I subsequently wrote) that President Ford had telephoned him in August, 1974 to solicit a recommendation on whom the President should nominate to be Vice President. Senator Byrd went on to recall his own verbatim advice to the President on a matter of evident national importance: "I can tell you right now my suggestion—Nelson Rockefeller."

7. Individuals who do not serve in government, but who take part in policy deliberations or discussions with Presidents, frequently make known the nature and details of such conversations, without apparent objection by the White House.

(a) Irving Kristol, Professor of Urban Values at New York University, confirmed in an interview with me which was cited in an April 12, 1970 article in *The New York Times* that he had discussed the causes of and possible remedies for domestic radicalism with President Nixon over dinner in the White House a month earlier. Professor Kristol and a White House official each recounted a discussion in which the President and the professor had drawn parallels between young middleclass Americans who resorted to violence and the Narodniki, young Russian aristocrats who murdered a 19th century czar.

(b) On June 23, 1975, *The New York Times* published a news article in which I recounted details of private meetings between President Ford and seven of his most trusted acquaintances outside government who comprise his "kitchen cabinet." I was told of the existence of the group of unofficial consultants by a White House official. Other White House officials described the nature of conversations that ranged over

political and policy matters. Several of the members of the "kitchen cabinet" told me of the candor with which they advised the President and some cited specific details. There was no suggestion by either the officials or the "kitchen cabinet" members that disclosure of the information would destroy their effectiveness or jeopardize the free flow of candid advice to and from the President. Indeed, several White House officials said, following publication of the article, that they thought the disclosure had been beneficial to the President by revealing some of the steps he had taken to try to prevent being isolated from critical, unofficial dialogue.

8. Some of these instances were obviously intentional efforts by the participants in deliberations to inform the press, with the consent of all the participants. Others, however, involved participants in deliberations disclosing the positions of other advisors without the consent of these advisors. My experience is that the fact that such information that some of the parties do not intend to disseminate is disclosed with such frequency indicates that participants in the deliberative process are aware of the likelihood that their positions may be subject to disclosure.

/s/James M. Naughton
James M. Naughton

Subscribed and Sworn to Before Me
this 11th day of July, 1975.

/s/Connie Eblatin
Notary Public
7/14/79

[Caption Omitted in Printing]

AFFIDAVIT OF JULIAN P. BOYD

STATE OF NEW JERSEY)
) ss:
COUNTY OF MERCER)

Julian P. Boyd, being duly sworn, deposes and says as follows:

1. I am editor of The Papers of Thomas Jefferson.

2. As a young lawyer traveling the Virginia circuits, Thomas Jefferson spent most of his time collecting and transcribing manuscript laws because he knew even then that "time and accident are committing daily havoc on the originals deposited in our public offices." As Governor of Virginia, as Minister to France, and as Secretary of State, Jefferson exhibited the same deep-seated concern for the preservation of public records. In consequence, almost the only documents produced by him in these offices that are not now available in state or federal archives are part of his file copies of letters written by him as governor.

3. During his two terms as President, Jefferson was extremely meticulous in depositing in the various departmental offices—State, Treasury, War, Justice, and Post Office—every document having any relation to the conduct of public business or being in any sense official in nature. As a result, the vast bulk of records of an official nature generated during Jefferson's presidency are still to be found in the various departmental record groups in the National Archives. Many of these could be regarded as personal papers and, under some other presidents, probably would have been. Being profoundly convinced that, as he put it late in life, "it is the duty of every good citizen to use all the opportunities which

occur to him for preserving documents relating to the history of our country," Jefferson unquestionably employed every opportunity offered by the presidency to see to it that the public records of the office remain in public custody.

4. While no exact statistical tabulation can be made of the relative amounts of personal papers that Jefferson took with him on leaving office and those of a public nature that he left in the departmental offices, my estimate of the ratio of the size of the two categories would be about in the order of one to fifty. This is a conservative estimate. It should be noted that, for his own convenience and protection, Jefferson retained *copies* of a good many official records, especially his notes and rough drafts of messages to Congress, proclamations, communications with departmental heads, and so on. But in all cases, so far as I know, the *originals* of these official documents are to be found among our public records as left there by him.

5. So far as I know, Jefferson never stated the principle which underlay this consistent practice. Perhaps this was because he considered it to be a self-evident proposition that, in our system, public records are public property. His consistent practice exemplifies the principle upon which he acted.

/s/Julian P. Boyd
Julian P. Boyd

Subscribed and sworn to before me, a Notary Public, this 8th day of December 1974.

/s/Margaret S. Harrell
Notary Public

My Commission Expires July 20, 1977

MEMORANDUM

THE WHITE HOUSE
Washington

March 7, 1973

MEMORANDUM FOR THE RECORD

FROM: WILLIAM F. MATTHEWS

SUBJECT: Disposition of Files in Central Files

The following listed boxes of correspondence were shipped to The National Archives today to be stored until the President's Library is available:

Description of Box	Quantity Stored
Task Force on Rural Development	2 Boxes
Task Force on Improving the Prospects of Small Business	2 Boxes
Task Force on Mentally Handicapped	1 Box
Task Force on Prisoner Rehabilitation	1 Box
Task Force on Air Pollution	2 Boxes
Task Force on Aging	3 Boxes
Task Force on Physically Handicapped	2 Boxes
Task Force on Science Policy	1 Box
Task Force on Low Income Housing	1 Box
Task Force on Business Taxation	1 Box
Task Force on Urban Renewal	1 Box
Task Force on Higher Education	1 Box
Task Force on Oceanography	1 Box
Task Force on Economic Growth	1 Box
Task Force on Highway Safety Mobility without Mayhem	1 Box
Blue Card Cases—Copies, etc.	3 Boxes
Children's Vietnam Mail—Ack. PK 44	4 Boxes

Miscellaneous Form Letters, etc.	4 Boxes
Abortion-Pro and Con-Pro Population	1 Box
Vietnam Mail—Ack. by cards PK 37	1 Box
Tax Credit for non-public schools	1 Box
Election Congrats and other subjects—Ack. by PK 37 and PK 38	1 Box
OEO Phasing Out	4 Boxes
Letters against injunction of United Farm Workers, Boycott-1972-letters and telegrams re acquisition of Caribair by Eastern Air Lines	1 Box
Oversize Attachments - 10070 - 10177	(16 Large Boxes (34 Regular Boxes
	91 Boxes

Description of Presidential Materials of the Nixon Administration Sent to the National Archives Building by the Office of Presidential Papers.

WHITE HOUSE CENTRAL FILES. Materials shipped by W.F. Matthews. See attached.

WHITE HOUSE STAFF OFFICE FILES. Staff office files, usually of a large quantity, which were inventoried and packed by the Office of Presidential Papers. A copy of the inventory was sent to White House Central Files for their records.

COMMISSIONS, COMMITTEES, BOARDS, ETC. These are the files of a Presidential commission, committee, or board whose records were considered Presidential property.

COUNCIL OF ECONOMIC ADVISERS. We understand that under prior administrations, each Chairman and member of the Council removed the papers held in his office when he departed. During the Nixon Administration the papers of the Chairman and the members were considered to be Presidential Materials.

WHITE HOUSE PHOTO OFFICE. Material shipped to the National Archives after the resignation for proper temperature and humidity controls. It includes negatives, contact sheets, and assorted prints.

WHITE HOUSE GIFT UNIT. Some personal gifts to the First Family were sent to the National Archives for storage.

Categories of Nixon Administration Material Held by White House Security Office.

—*Investigative files*—containing correspondence, memoranda and notes pertaining thereto. They include:

Potential White House Complex Pass Holders
Proposed Presidential Appointees
Presidential Guests, including entertainers and various individuals who may have had contact with the First Family through social events, appointments, etc.

—*Subject files*—Departments and agencies of the Federal Government, White House, Executive Office of the President, Boards, Commissions; Security files.

—*Card Index*

Categories of Nixon Administration Material Held by National Security Council.

—Memoranda to the President for his information, review, and decision, including proposed Presidential decisions and instructions.

—Memoranda of conversation between the President and foreign Heads of Government/State and other foreign dignitaries including, but not limited to Foreign Ministers and other Cabinet officers, Ambassadors and Special Emissaries.

—Records of appointments and meetings with U.S. Cabinet officers and other officials pertaining to national security matters.

—Intelligence reviews, reports and analyses pertaining to national security affairs.

—Defense-related papers associated with deployment of forces, budget, research and development, and organization/command structure.

—Telegrams originating in the White House dispatched to foreign governments, U.S. ambassadors, and force commanders relating to foreign policy and national security decisions.

—Sensitive incoming cable traffic associated with negotiations, plans, evaluations, and the impact of decisions taken on national security.

Materials Held in Safe Zone 128 and Room 429, EOB

SAFE ZONE 128

– 888 original tape recordings of conversations and 60 to 75 copies.

ROOM 429

This room contains the following materials:

– 15 boxes of domestic Gift records.

– 13 boxes of President Nixon's personal files, letters A M.

– One box containing two xerox copies of foreign gift records.

– Three packages containing Gift Unit catalogue cards.

– 8 boxes of Presidential files.

– Assorted boxes and envelopes:

  – 1 Large box domestic gifts—household items for Mrs. Nixon.

– 1 Record size box containing gifts–domestic (mainly household items) for President Nixon and Family.

– 1 Box of copies of Archives Lists–Domestic.

– 1 Box of copies of Archives Lists–Head of State.

– 1 Box of records of Inventory of "Give-Away" Items.

– 1 Box of Department of State Memos–Suggested Gifts for Foreign visits.

– 1 Record size box of an assortment of printed acknowledgement cards used during President Nixon's Administration.

– 1 Record size box containing Gift Unit "Working" Files.

– 6 Record size boxes of miscellaneous drafts, memoranda and form letters, Gift Unit.

– 1 Brown envelope containing manila folder–additional pages plus 1 corrected page to the Archives List.

– 1 Brown envelope containing 48 Alphabetical Cards (Domestic) (Gift Unit).

[Caption Omitted in Printing]

PLAINTIFF NIXON'S SUPPLEMENTAL EVIDENTIARY PRESENTATION

Plaintiff, by his counsel, herewith submits the following materials as a supplement to his evidentiary presentation of June 30, 1975.

1. Pursuant to the joint stipulation of the parties concerning the introduction of affidavits as evidence in

this case, plaintiff submits affidavits from the following persons:

A. Richard A. Jacobs
B. Thomas P. Wolf
C. William F. Matthews
D. Gertrude Fry
E. John C. Broderick
F. Jack A. Albright
G. Mildred Stegall
H. John R. Hubbard

In explanation of plaintiff's filing of these affidavits, plaintiff wishes to inform the Court that the affidavits of Richard A. Jacobs, Thomas P. Wolf, William F. Matthews, Gertrude Fry and John C. Broderick, each of whom is an employee of the federal government, were prepared by plaintiff's counsel following, in most instances, interviews with the affiants attended by counsel for both parties. Draft affidavits were subsequently submitted to government defendants prior to plaintiff's filing deadline of June 30, 1975. These drafts were reviewed and edited by them in consultation with the affiants and counsel for the joint intervenor-defendants.

The affidavits of Jack A. Albright and Mildred Stegall were obtained after their names were provided to plaintiff by the government defendants. Mr. Albright's identification was requested during the first week of July when plaintiff informally asked the government defendants to provide the name of any government employee with knowledge of the nature of the White House taping system during President Johnson's administration. Mr. Albright's name was provided plaintiff's counsel on July 28, 1975. Plaintiff's request for identification of Mildred Stegall was made on July 15, 1975, following plaintiff's receipt of the Director of the Johnson Presidential Library's letter responding to plaintiff's informal dis-

covery request by letter of June 11, 1975. The Director's letter had referred to Mrs. Stegall as ". . . a library employee who had worked for Mr. Johnson for many years . . ." Plaintiff's request for other identification was made on July 15, 1975, and Mrs. Stegall's name was provided to plaintiff on July 22, 1975.

The affidavit of John Hubbard, President of the University of Southern California, was referred to in plaintiff's initial evidentiary presentation filed June 30, 1975. There, plaintiff noted that Mr. Hubbard was traveling in Saudi Arabia and would not return until the latter part of this month.

2. In addition to the affidavits listed in paragraph 1, plaintiff intends to submit within a few days several affidavits from persons serving as Directors of the various Presidential Libraries of the National Archives and Records Service. These affidavits (or a stipulation setting forth the same information) will be based upon the Directors' responses to plaintiff's informal discovery letters of June 11, 1975, which were sent to all Presidential Libraries with the consent of the government defendants. They will also be based upon follow-up questions to the various Directors' affidavits (filed today) by the government defendants in support of their case. Because each of the Directors is an employee of the federal government, plaintiff has had to rely upon the government defendants to obtain responses to the follow-up questions. Those questions were submitted to the government defendants on July 29, one day after the Directors' affidavits upon which the government defendants intended to rely were made available to plaintiff, and the day on which the last response to plaintiff's informal discovery letters was received.

3. Finally, as part of plaintiff's proof in this case, plaintiff intends to rely upon his own testimony and the

testimony of Jeanne Davis given in depositions in this case, and such other evidence as may be received by this Court through stipulations or through submissions of the other parties.

Respectfully submitted,

/s/Herbert J. Miller, Jr.
Herbert J. Miller, Jr.

/s/R. Stan Mortenson
R. Stan Mortenson

MILLER, CASSIDY, LARROCA & LEWIN
2555 M Street, N.W.—Suite 500
Washington, D.C. 20037
ATTORNEYS FOR PLAINTIFF
Richard M. Nixon

July 31, 1975

[Caption Omitted in Printing]

AFFIDAVIT OF RICHARD A. JACOBS

Richard A. Jacobs, being duly sworn under oath, deposes and says as follows:

1. I am Deputy Assistant Archivist for Presidential Libraries of the National Archives and Records Service, General Services Administration, 8th Street and Pennsylvania Avenue, N.W., and have been employed in that position since July 1972. I was originally employed by the National Archives and Records Service (hereinafter NARS) in September 1958, as a staff archivist in the Exhibits and Publications Branch. Between 1960 and December 1965, I was employed at various positions in

the Administrative Office of NARS. From December 1965 to March 1968, I held the position of Chief of the Central Reference Staff for the National Archives. I was Acting Director of the Herbert Hoover Presidential Library at West Branch, Iowa, between March 1968 and July 1969; and from then until July 1972, I served as Assistant to the Assistant Archivist for Presidential Libraries.

2. From my past and present employment experience with NARS, I have gained first-hand knowledge of the operational methods of each of the Presidential Archival Depositories under the auspices of the National Archival system. I have also gained, both from first-hand study and from discussions with archival colleagues, knowledge of the history of each Library and many of the events relating to the disposition and treatment of the papers and other materials deposited in each Library.

HOOVER LIBRARY

3. Shortly after leaving office, Mr. Hoover directed that the majority of the Presidential historical materials of Mr. Hoover and his immediate staff during his term as President be deposited in the Hoover Institution for War, Revolution and Peace at Stanford University in Palo Alto, California; he retained portions of his Presidential papers at his residence in New York City. By letter dated December 15, 1960, addressed to the Administrator of the General Services, Herbert Hoover indicated his intent to donate, among other things, the Presidential historical materials of Mr. Hoover and his immediate staff during his term of office as President and related materials to the United States to be deposited in a Presidential Library established at West Branch, Iowa. Mr. Hoover annexed to this letter of intent a Statement of Conditions relating to access and the establishment of a Coordinating Committee. A true copy of this letter from Mr. Hoover and its attachment are appended to this Affidavit as Exhibit A. Until 1962, when these files, papers and other related materials were shipped to the Hoover Presidential Library at West Branch, Iowa, the government did not possess these materials.

4. From the close of the Hoover Administration to the deposit of his Presidential historical materials in the Hoover Library at West Branch, Iowa, Mr. Hoover exercised sole control over access to these files and materials. I have seen among the papers deposited at the Hoover Library written approvals and disapprovals of requests by persons for access to Mr. Hoover's files and materials. I recall specifically a denial by Mr. Hoover of a request for access made by Mr. E.E. Robinson, a historian, during the time the materials were on deposit at the Hoover Institution at Stanford. I do not ever recall seeing a request for access by a subsequent Presidential administration.

5. Mr. Hoover, as a condition to the deposit of these materials with the United States, established a Coordinating Committee composed of Allen Hoover, Herbert Hoover, Jr., and such other persons as they might appoint. This committee was granted the authority to exercise, after the death of Mr. Hoover, all of the powers referred to in the Statement of Conditions accompanying Mr. Hoover's letter of intent to donate his Presidential materials. Pursuant to one condition which required the archivists to "seek the advice of and confer with" the Coordinating Committee with respect to the index, cataloguing and exhibition of his files and materials, I, as Acting Director of the Hoover Library, would consult with Allen Hoover from time to time concerning treatment of these materials. I would also recommend to the Coordinating Committee the removal of certain

restrictions upon access to the Presidential materials before actually removing them.

6. The Statement of Conditions further directs the archivists to "seek the advice and confer with" the Coordinating Committee with regard to the staffing of the Library, including the position of director. I am aware that the Coordinating Committee, upon consultation with the archivists regarding the selection of a director, has on occasion expressed disagreement with appointments of certain individuals. Such individuals were not further considered as candidates for such appointments.

7. President Hoover was an active writer throughout his post-Presidential years, authoring some 43 books and numerous articles dealing with various subjects and aspects of his public service.

TRUMAN LIBRARY

8. After President Truman left the Presidency, Presidential historical materials of Mr. Truman and his staff during his term of office were transferred to the Jackson County Courthouse in Kansas City, Missouri, and later to the Memorial Building in Independence, Missouri, where he undertook to organize and review these files.

9. On January 17, 1953, President Truman informed Mr. Jess Larson, the Administrator of General Services, of his preliminary intent to donate to the United States these Presidential historical materials subject to certain restrictions and conditions later to be determined. Pursuant to this letter, the Administrator provided the two requested archivists, subject to Mr. Truman's approval and direction. (Exhibits B, C, D, E)

10. Beginning in early 1957, Presidential historical materials of President Truman and his staff were

transferred to the Truman Library in Independence, Missouri. After the transfer, archivists employed at the Truman Library reviewed these materials to identify and segregate those materials covered by the restriction categories specified in Mr. Truman's letter of intent. These restricted materials were withheld from public access while other portions upon review were gradually opened to the public for research. In addition, Mr. Truman withheld some of his Presidential historical materials in a suite of offices which he maintained at the Library, and these did not come into the possession of the archival staff at the Truman Library until November 1974 under the provisions of Mr. Truman's last will and testament.

EISENHOWER LIBRARY

11. By letter dated April 13, 1960, President Eisenhower offered to donate Presidential historical materials of President Eisenhower and his staff to the United States subject to certain restrictions upon access and other conditions. A true copy of this letter is attached to this Affidavit as Exhibit F. One of the conditions imposed by President Eisenhower was the approval of himself or his representative of all removals of restrictions upon access, and, pursuant to this condition, after the death of the former President, John S. D. Eisenhowerr appointed a committee composed of himself, William Hopkins, Bryce Harlow, and Henry Roemer McPhee. This committee has met several times to review proposals of the Director of the Eisenhower Library for imposing or removing restrictions upon access to Presidential materials and to approve guidelines.

KENNEDY LIBRARY

12. The Presidential historical materials of John F. Kennedy and his staff were donated to the United States

by a deed of gift executed in concert with Jacqueline B. Kennedy, Robert Kennedy, and Edward M. Kennedy as donors and accepted by Lawson B. Knott, Acting Administrator of General Services, dated February 25, 1965. A true copy of this deed is attached to this Affidavit as Exhibit G. The deed of gift stipulates conditions to govern public access to the materials and specifies certain restriction categories under which materials would be withheld from public access. By an amendment to this deed of gift transmitted by letter dated August 20, 1968, the donors provided for the establishment of a donor's committee to guide the archival staff during initial review of documents for imposition of access restrictions. (See Exhibit G)

13. By a letter dated May 5, 1965, the members of the Kennedy family designated as donors notified Lawson B. Knott, Jr., Acting Administrator of General Services, that the Archivist of the United States is authorized to make available to President Lyndon B. Johnson, while in office, any materials that might relate to or be required in connection with the transition of the office of President from the late President Kennedy to President Johnson or that might otherwise be requested by President Johnson for purposes of performance of his official duties. A true copy of this authorization is attached to this Affidavit as Exhibit H.

14. Both the Rockefeller Commission on CIA Activities and the Senate Select Committee Investigating CIA Affairs have requested, through the Office of Presidential Libraries, access to materials of the Truman, Kennedy, and Johnson Administrations. As with all other requests for access to Presidential historical materials located in these archival depositories and in order to comply with the Presidential Libraries Act of 1955, we are processing each request to ensure that the donor restrictions, which Congress mandated we honor, are respected.

JOHNSON LIBRARY

15. President Johnson, by letter of August 13, 1965, to Lawson B. Knott, Jr., Acting Administrator of the General Services Administration, offered his Presidential historical materials to the United States subject to certain restrictions and conditions. An accurate copy of this letter is attached to this Affidavit as Exhibit I. By letter to President Johnson dated August 17, 1965, Mr. Knott accepted the offer. An accurate copy of this letter is attached to this Affidavit as Exhibit J. President Johnson later supplemented his original offer of papers by proposing to the Administrator of General Services that a qualified staff be assembled, making selections from persons within the executive departments and agencies acceptable to President Johnson, to undertake a review of his Presidential historical materials under his direction in order to identify and segregate restricted materials and provide for public access to the remainder as early and as fully as possible. An accurate copy of this letter dated December 19, 1968, is attached to this Affidavit as Exhibit K.

16. When President Johnson left office in 1969, he directed that his Presidential historical materials be transferred to a federal office building in Austin, Texas, to await completion of the Lyndon Baines Johnson Library. Although we have received some documents subsequent to the death of Mr. Johnson from other sources which, according to the donors, were part of the files of President Johnson and his staff, we have no knowledge of any additional Presidential files of Mr. Johnson which were not deposited in the Library.

PRESIDENT NIXON

17. During the early months of the Nixon Administration, two archivists, employed by NARS, were

assigned to the White House to perform developmental work with the files and other materials generated by President Nixon and his staff since I understood that these materials eventually would be housed in a Nixon Library in the same manner as the papers of former Presidents. In January 1971, John H. Nesbitt was employed by NARS and assigned to the White House to assist and supervise this effort begun in 1969. Gradually, the staff under his supervision increased to 9.

GENERAL ARCHIVAL PROCEDURE

18. In each Presidential library, the initial review of materials and segregation of restricted categories is handled by the archival staff, usually in consultation with donor-appointed representatives or a committee, if provided for by the donor in his letter of intent. The categories of such restrictions include national security, the protection of foreign relations, statements or memoranda made to the President in confidence, statements made in the documents which might be used to injure or harass individuals, and statements or documents relating to the private or business affairs of the President or his family, or those who communicate with him.

19. In order to identify documents subject to these donor restrictions, archivists must review the documents to determine content and to determine whether any restriction categories might apply. An archivist could not properly and completely restrict a document because it is related to personal or family business or private affairs without reading at least some of the document.

20. Each President or Presidential agent or heir since Mr. Hoover has not only consented to but has affirmatively requested the help of the NARS staff in reviewing his files and other materials generated by him or his staff and placing specified categories under restrictions as

required by the terms of the agreement. If such a request were not made or such consent not obtained, it would be impractical for the NARS staff to proceed with archival processing of the materials for the early availability to public access as clearly mandated by each letter of intent or deed of gift. If an absolute seal is placed on specified portions of the deposited materials, and accepted by the Administrator, NARS employees are bound to respect that seal.

21. Administering the requirements of section 104(a) of the Presidential Recordings and Materials Preservation Act of 1974 will require a process of screening and review by archival staff similar to but more complex than the process of review conducted in the Presidential and other papers on deposit in the other Presidential libraries. Should the draft regulations which were submitted to Congress on March 19, 1975, become final, the following procedure for processing the materials would be followed. During the early stages of this review process to segregate and protect restrictable materials and to identify and return non-historical personal materials, we contemplate that the panel of senior archivists provided for in the draft regulations will work closely with staff archivists, examining certain documents until working guides and models can be developed for determining which documents should be retained by the United States or returned to Mr. Nixon or other private parties and whether each retained document should be opened to public access or restricted. As the review process continues, this actual review of documents by the panel of senior archivists will not be necessary as the archival staff will have an increasing number of guidelines and models for making such determinations. It is anticipated, however, that the panel of senior archivists will continue to be consulted and called upon to examine certain documents which may not fit within the guidelines or

compare with previous models. Furthermore, the Presidential materials review board, also provided for in the draft regulations, will be available as an additional level of review in difficult cases, will always participate in cases involving the return of non-historical materials by reviewing such categories before public notice is given for a proposed return, and will hear appeals from any interested parties relating to decisions made by archivists with respect to the return of private or personal materials, those having no general historical significance, and any restrictions imposed in accordance with the regulations. Until the regulations become final, and in the absence of such actual review by the panel of senior archivists and the development of guidelines and models, I am unable to state definitively whether any certain documents among the Nixon papers, presented as examples, should be retained by the United States or returned to Mr. Nixon.

22. Attached hereto as Exhibits L, M, and N are true and accurate copies of letters on file in the Office of Presidential Libraries.

/s/Richard A. Jacobs
RICHARD A. JACOBS

Washington)
) ss.
District of Columbia)

Subscribed and sworn to before me
this 29th day of July, 1975.

/s/Francis J. Heppner
Notary Public
My Commission expires: August 31, 1979

EXHIBIT A

HERBERT HOOVER,

The Waldorf Astoria Towers
New York 22, New York
December 15, 1960

Honorable Franklin Floete, Administrator
General Services Administration
General Services Building
Washington 25, D.C.

Dear Mr. Floete:

Through the generosity of friends and the labors of the Herbert Hoover Birthplace Foundation, Inc., a library museum building is now being completed on the Foundation property of some 28 acres at West Branch, Iowa, on which are also situated the cottage in which I was born and various other structures. The holdings of the Foundation, designated collectively as the Herbert Hoover Library Museum, are to be offered as a gift to the United States to house my papers and other historical materials under Section 507(f) of the Federal Property and Administrative Services Act of 1949, as amended, providing for Presidential archival depositories. I am indeed grateful for this action of the Foundation.

In furtherance of it I hereby offer to the United States under Section 507(e) of the Act and subject to the terms hereinafter set forth, all of my collected Presidential papers, wherever they may now be housed, as well as papers accumulated by me prior to my presidency and those accumulated since leaving the White House. These documents will probably number several million papers. My offer also includes other historical materials I have accumulated, such as books, photographs, motion pic-

tures and memorabilia of various kinds. I will transfer these papers and materials as soon as practicable after the transfer to the United States of the Foundation property, at such time or times as may be agreed upon between the Administrator of General Services, or his designee, and me or my representative. Excluded from this offer are the "war and peace" documents gathered since World War I, including records of such public organizations, which I have given to the War and Peace Library at Stanford University, Palo Alto, California, and which are now located there. There may be some other documents or materials which I or my representative shall determine to be excluded from this offer by reason of private or personal interest on my part or on the part of a member of my family.

My offer is conditioned upon acceptance by the United States of the offer of the land and buildings, known collectively as the Herbert Hoover Library Museum, which is being made by the Herbert Hoover Birthplace Foundation, Inc. My offer is further conditioned upon the agreement of the United States to maintain and operate the Library Museum at all times as a Presidential archival depository, as provided by the Act, for the storage of the papers and other historical materials I propose to give.

The papers and historical materials to be transferred to the United States pursuant to this offer are to be kept at the Library Museum, permanently, provided that the Administrator of General Services, subject to general terms and conditions for the handling and preservation of my papers, which conditions are set forth in a "Statement of Conditions" attached to this letter, and designated as "Annex A," shall have the right in his discretion (a) to make temporary loans to such persons, organizations, or institutions as he shall determine, (b) to

dispose by sale, exchange, or otherwise of any such papers or materials which the Archivist of the United States may determine to have no permanent or historical interest or to be surplus to the needs of such Library Museum, and (c) to remove from said Library Museum any or all such papers or materials if he deems it necessary to preserve them from threatened destruction.

I deem it necessary in the public interest, which is, of course, my interest, to prescribe the conditions contained in "Annex A." This is primarily to protect the many confidences of which the President and former presidents of the United States are the recipients. In addition, the period of time covered by my papers is so extended and the subject matters with which they deal so diverse that I consider it essential, particularly during the period of transfer and initial processing, to operate within these conditions. It is, however, my purpose to make available to the public, through your office, a substantial volume of my papers and historical materials at the earliest possible time and ultimately all of them as the passage of time and events may permit. Toward this end, I am establishing a Coordinating Committee, consisting of my sons and executors, to act with your office in my behalf as I shall direct during my lifetime, and to stand in my stead upon my death for such period of time as may be required. The committee will carry out my broad purpose to give the United States my papers and historical materials for access, while at the same time providing for the safeguarding of the information and its use. It is my expectation that the committee, under my direction, will establish procedures for its operation and perpetuation to be of maximum effectiveness in furthering my purposes and of optimum assistance to your office.

I wish to express my appreciation to you and to members of your Administration for your counsel in

connection with this offer of mine. I believe the offer to be in accordance with those made to and accepted by you from others under the legislation providing for Presidential archival depositories. I am hopeful that in swift time we may see this Library Museum in operation as one more source of the materials of which the history of this glorious country is made.

With kindest regards,

Yours faithfully,

/s/Herbert Hoover
Herbert Hoover

ANNEX A

Statement of Conditions

The following conditions shall govern the papers and other historical materials (as defined in the Act of August 12, 1955, 69 Stat. 695, (and hereinafter called Materials) of Herbert Hoover to be transferred to the United States through the Administrator of General Services (hereinafter called Administrator) for deposit in the Presidential archival depository to be established at West Branch, Iowa, under the terms of a letter from former President Hoover to Administrator Floete, dated December 15, 1960, to which this Statement of Conditions is attached as a part.

1. *Persons having access:*

(a) Persons who shall have complete access to the Materials transferred shall be Herbert Hoover (hereinafter sometimes referred to as the Donor), persons designated by him in writing during his lifetime, and, after his death, persons designated in writing by the Coordinating

Committee (hereinafter called the Committee) established by him.

(b) Notwithstanding the foregoing, designated employees of the National Archives and Record Service shall be allowed all access required for the proper performance of normal archival work processes on such materials, not however, to include any publication or any disclosure of such material, under the general supervision of the Archivist of the United States.

2. *Coordinating Committee:*

(a) *Membership:* A Committee is hereby established to serve without compensation and to exercise, after the death of Herbert Hoover, (or during his lifetime as he may designate) all powers referred to in this Statement of Conditions or which Herbert Hoover might have exercised in his lifetime with respect to the Materials. The Committee shall consist of Herbert Hoover, Jr., Allan Hoover, and such others as Herbert Hoover, Jr., and Allan Hoover or the survivor of them may appoint to bring the total number of the Committee to not less than two nor more than five. If vacancies shall occur, Herbert Hoover, Jr., and Allan Hoover or the survivor of them, or after the death of both of them, the then acting member or members of the Committee, shall have power to fill such vacancies by instrument filed with the Committee's Secretary. The Committee shall select its Secretary, and any action taken by the Committee shall be sufficiently evidenced by a certificate in writing made by the Secretary, upon which certificate the Administrator may rely, conclusively.

(b) *Meetings:* Meetings may be held at such place and at such time as the members may from time to time determine, with a majority of the members then acting to constitute a quorum for the transaction of business. The

Committee may act without a meeting by any instrument signed by a majority of the members then acting.

(c) *Delegation of Authority:* The Committee may delegate any of its powers to one or more of its members (save the power to appoint new members as set forth in paragraph 2(a) and the power to remove conditions as set forth in paragraph 7 hereof) and may from time to time authorize one or more members, or any agent, to execute and deliver any instrument on behalf of the Committee.

(d) *Amendment:* Herbert Hoover shall by written instrument have the power to alter or amend this paragraph 2, relating to the establishment and functioning of the Coordinating Committee.

3. *General Advice on Indexing, Cataloging, Exhibition and Staffing:*

The Adminis..ator and the Archivist of the United States shall from time to time seek the advice of and confer generally with Herbert Hoover or with the Committee with respect to standards and procedures to be employed in the indexing, cataloging, and exhibition of the Materials, and with respect to the staffing of the Library Museum.

4. *Deposited and Transferred Materials:*

Materials transmitted to the Library Museum from time to time, by the Donor, or the Committee or others on behalf of the Donor, will be designated as Deposited Materials, title thereto to remain in the Donor, or after the Donor's death in the Committee, pending a determination, to be made during initial processing or as soon thereafter as possible, as to which, if any, of the Deposited Materials are to be excluded because of a personal or private interest of the Donor or a member of his family. Pending transfer of title, Deposited Materials

so excluded may be withdrawn at any time by the Donor or Committee. Upon clearance in writing by the Donor or Committee in the event of Donor's prior death, title to Deposited Materials will vest in and transfer to the United States, and thereafter such Transferred Materials shall be administered by the United States in accordance with this Statement of Conditions.

5. *Sealed Materials:*

(a) The following Classes of Materials shall be segregated upon review and placed under seal:

(1) Those that are security-classified pursuant to law or Executive Order, until such classification shall be removed.

(2) Those the use of which may be prejudicial to the maintenance of good relations with foreign nations.

(3) Those containing statements made by or to Herbert Hoover in confidence.

(4) Those relating to the Hoover family or private business affairs, and those relating to the families or private business affairs of others having had correspondence with Herbert Hoover.

(5) Those containing statements about individuals which might be used to embarrass them or members of their families.

(6) Such other Material as Herbert Hoover, or the Committee, or the Administrator may specify.

(b) Materials which have not been reviewed and Materials placed under seal shall not be made available to anyone or their contents divulged to anyone, except

persons authorized under the terms of paragraph 1, captioned "Persons having access."

(c) Materials placed under seal shall be reexamined from time to time by the Committee or as the Committee may direct and, subject to the approval of Herbert Hoover or the Committee, shall be opened to research use as soon as the passage of time or other circumstances have removed the conditions that required that they be placed under seal.

6. *Access for purpose of research:*

All competent private persons wishing to use for serious, scholarly research Materials which have been reviewed as provided in paragraph 5 above and which have not been placed under seal as a result of such review, shall be granted equal access thereto under rules and regulations to be prescribed by the Administrator or his designee.

7. *Removal of Conditions:*

Any and all conditions included herein as to any, part of, or all of the Materials shall be released as soon as the passage of time or other circumstances, as determined by both the Administrator and the Donor or the Committee, shall have eliminated the present justification therefor.

8. *Rules and Regulations of the Administrator:*

This Statement of Conditions is not intended to prevent the Administrator or his designee from establishing such rules and regulations deemed desirable by him for the use of the Materials, which are not in derogation of any of the conditions set forth herein.